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ABSTRACT

This handbook clarifies how to meet legal requirements when the same student population qualifies for both bilingual and special education programs. Legal streamlining of existing California-mandated requirements for bilingual and special education is emphasized. The handbook begins with a discussion of the difficulties encountered when providing educational services to pupils with limited English proficiency who demonstrate academic deficiencies, and outlines procedures for distinguishing between a true disability and a language difference. Types of bilingualism and their effect on school achievement are examined. The use of the Student Study Team is suggested in the student referral process; such teams combine regular education teachers and specialists working together to develop an intervention plan emphasizing parent and student involvement. A detailed comparison of bilingual and special education law is presented. Specific legal requirements of California bilingual laws and special education laws are paralleled to assist in efficiently implementing the legislation. The handbook then presents administrative steps that combine two separate laws into one single procedure from the point of referral to placement. Appendices discuss: (1) methods for ascertaining legal compliance, and (2) sunset program provisions for five California special education and bilingual education programs. (JDD)

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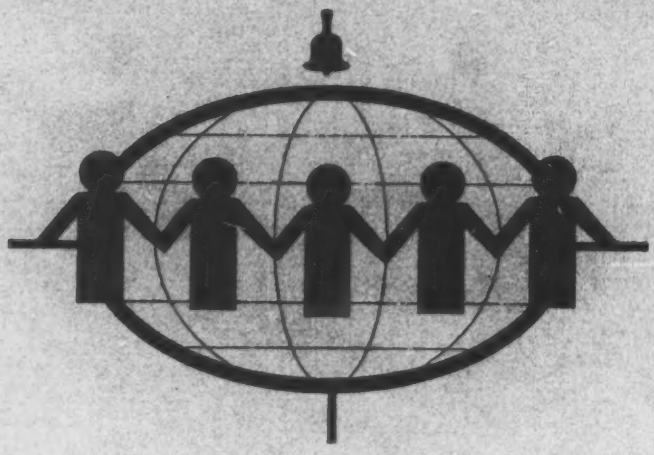
Bilingual and Special Education

Procedural Manual for Program Administrators

Crosscultural Special Education Series, Volume 1



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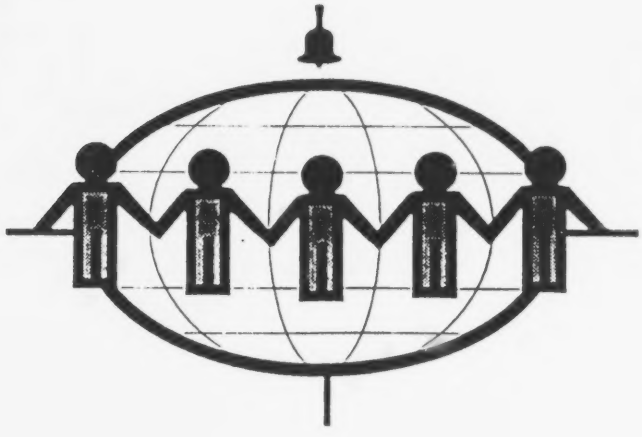

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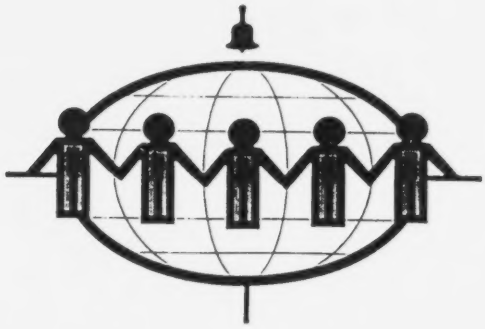

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Introduction

This handbook is written to respond to the need for clarification of how to meet legal requirements when the same population qualifies for different special programs. Dual eligibility for the same pupil generates unique administrative problems for school administrators and program implementors. Both bilingual and special education laws contain tremendous detail which can be confusing. The complexity increases as both sets of laws are applied to the same population.

Both the bilingual and the special education program require a high level of specialized expertise. Specialists working in these programs may not always communicate with each other about their programs. Secondly, the regular classroom teacher might also be left out of the communication link. Poor communication among specialists and the classroom teacher tends to foster misunderstandings and a dependency on the specialist to take care of problem pupils. The teacher may not invest the time to develop competencies necessary to work directly with pupils who have problems. Pupils who are having trouble in the regular classroom receive extra help by leaving the classroom for special instruction. However, information covered in the classroom while the pupil is absent often has to be taught at a later time. The specialists and regular classroom teacher need to work together as a team to provide appropriate education for the student with special needs in the regular classroom setting as much as possible to avoid excessive pull-outs.

Numerous reports document the need for increased coordination among categorically funded programs. A 1981 study by the Rand Corporation illustrates how poorly coordinated categorically funded programs work to weaken the regular core program. The core program is weakened because excessive pull-outs make the pupil miss too much of the regular core program which must be taught later without the benefit of the entire classroom's participation. The report went on to recommend that special programs should work closer together to improve the core program provided to all students. To summarize, some complaints about special programs include:

- **Laws and regulations are difficult to implement.**
- **Procedures are time consuming.**
- **Not clear when to use a special program for certain pupils.**

Problems like the ones mentioned can be alleviated by merging requirements into single steps. Clarifications illustrated in writing can lead to increased knowledge and understandings. The following assumptions form the basis for this procedural handbook:

- **Increased written clarifications lead to improved compliance.**
- **Procedures can be merged to reduce duplication of effort.**
- **Appropriate referral for special education relies on closer articulation with bilingual education.**

Compliance with legal requirements is a prerequisite to quality programs. Minimum legal compliance requires meeting the intent of the legislation, whereas, program quality means the enhancement and refinement of current operations to increase student outcomes. Providing accurate information in a written manual can help to *free individual staff time* so they can work on the bigger challenge of planning effective programs for all pupils.

Historical Perspective

Historically, LEP pupils have sometimes received special education when they were ineligible. Others have been denied services. Misdiagnosis of pupils in special education led to the court order *Diana v. California State Board of Education* (1970) which requires monitoring of Hispanic pupil enrollments in special education. Fear of litigation by school districts can lead to the under-identification of minority pupils in special education. Data collected in 1986 by the California State Department of Education (CSDE) pupil count verifies the trend of shifting from *over-identification* of minorities in special education to *under-identification*. Hispanics, who represent twenty-eight percent of the entire K-12 population, are *underrepresented* in all categories of handicapped students, with the exception of specific learning disabilities and mental retardation.

Other LEP pupils (e.g. Asians) are underrepresented in special education. Asians constitute seven percent of all pupils K-12, but only three percent are in special education (CSDE Racial Ethnic Survey, 1986). Some researchers have speculated that the reverse trend of underrepresentation is nothing more than a shifting of pupils from one category to another (Ortiz, 1983). Other reports describe the confusion that exists among school personnel about how to identify LEP pupils (CSDE Task Force Report, 1983). Some districts fear litigation from advocates and consequently exercise great caution before placing minorities into special education.

There is confusion about how to teach LEP pupils, particularly when both a learning disability and a language difference are present. Nevertheless, lack of English language skills should not deny special services to address a learning disability. School Site Teams or Student Study Teams must first identify students who require additional instructional planning. Next, assessments must be conducted by the appropriate specialists, so that the team may decide how best to organize available resources in order to meet the educational needs of the identified students. Finally, the team should provide ways to determine effectiveness of the instructional strategies.

Demographics

Large increases in the number of limited English speaking pupils place new demands on schools to properly meet individual pupil needs. Current census data (1986) reported to the CSDE identified over 567,000 LEP pupils and nearly one million students who at one time spoke a language other than English. This represents one fourth of the total school-aged population in the state. Projections indicate that the LEP populations will continue to increase over the next decade. Increased immigration from countries like Mexico contribute to California's growth of limited English speaking pupils. If immigrants continue to flee their homelands because of poor economic conditions, the State's population could reach 35 million by the year 2000. The legislative report entitled *California 2000: A People in Transition* (1986) notes:

> **By the year 1990, the majority of pupils in our schools will be ethnic minorities. More pupils will come from lower income families and at least fifteen percent will arrive at school without any knowledge of English.**

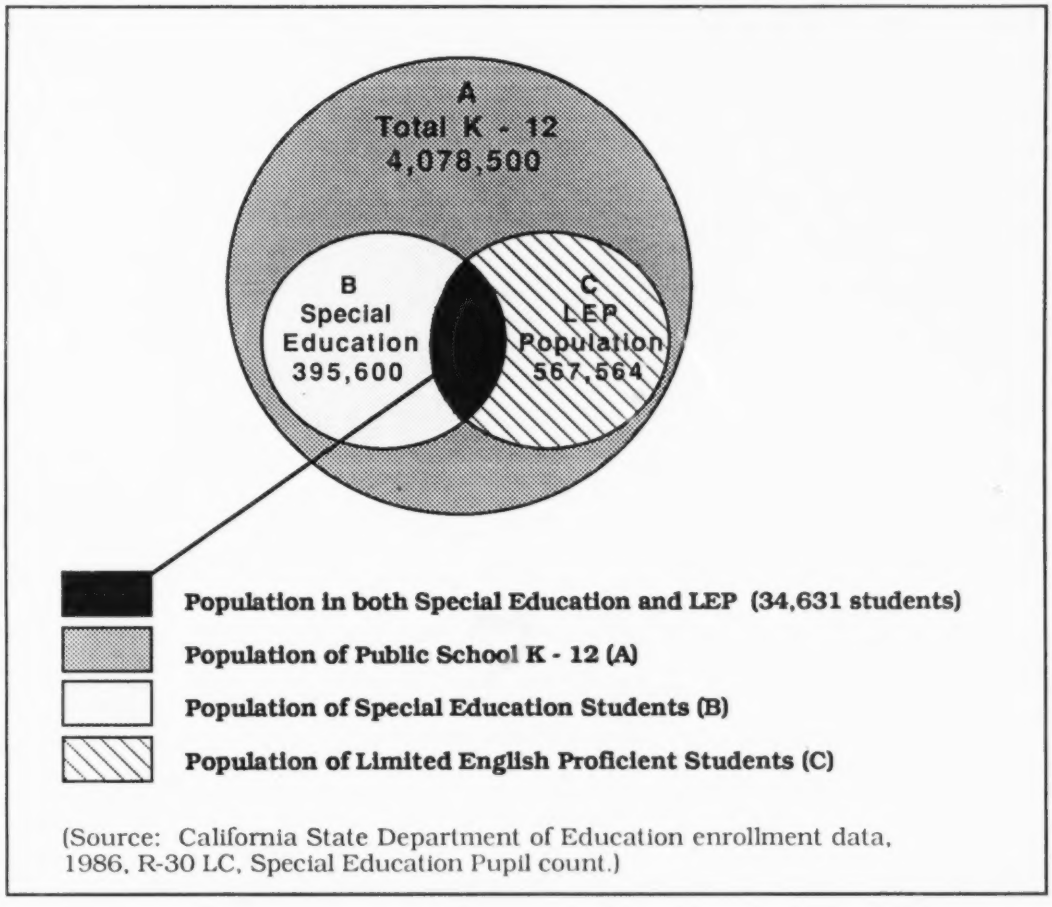
These demographic shifts place tremendous pressure on monolingual staff who cannot communicate to pupils in their native language. Fourteen percent of all children entering kindergarten in 1985 were LEP (CSDE, Census 1985). The current number of bilingual teachers is far below the number needed to match population needs.

In addition to speaking a different language, these pupils also have different cultures, values, and viewpoints which influence classroom behavior. What may seem commonplace among U.S. born children is totally new to newly arrived immigrant children. Instructional staff will need to learn how to use cultural differences within the instructional program. Differences in culture and language should not be barriers to effective education. Instructional staff also want to feel comfortable teaching new immigrants in spite of not knowing their language and culture.

Over four million K-12 students are currently receiving educational services in the state of California. Nearly ten percent of these students are enrolled in special education programs due to a handicapping condition such as mental retardation, orthopedic impairments, emotional disturbance, speech delay, sensory impairment, or learning disabilities as delineated in Public Law 94-142.

Of the total California K-12 student population, 567,564 students are identified (CSDE 1986 Pupil Count) as Limited English Proficient. Surprisingly, out of this LEP student population, only six percent receive special education assistance. This is smaller than might be expected based on equal distribution of handicapping conditions among the entire student population. The following figure illustrates the overlapped population.

Figure 1



(Source: California State Department of Education enrollment data, 1986, R-30 LC, Special Education Pupil count.)

The low placement rate of LEP students into special education programs may be due to a number of factors. Fear of litigation may be a deterrent to referral for services. Staff may hesitate to provide duplicative services to students with multiple needs or school staff may not have a process for cross-categorical programming of students with special needs.

Correcting this trend requires accurate, timely information concerning legal and programmatic issues. Educational administrators need to fully understand the legal requirements to ensure all students equal access to special education regardless of their language ability.

Legal Issues

Every school administrator needs to understand special education and bilingual education requirements. Knowledge of judicial decisions and legal mandates are necessary to prevent legal problems. Today's administrator needs to not only provide educational leadership but also be able to avoid legal conflicts.

To successfully implement law takes translating complex requirements into simple procedures. Whereas, on the surface some requirements may appear unrealistic due to their complexity, superficial knowledge of laws may lead to misconceptions regarding specific requirements. School administrators do not always have time available to carefully analyze legal requirements.

In some cases, the law may require that a certain procedure be followed, even when general knowledge of how to execute the procedure may be lacking. Some legal requirements assume prior knowledge or expertise, when in reality such knowledge may not exist. For example, in special education assessments must rule out the effects of acquiring a second language so misdiagnosis does not occur (California Administrative Code, Title 5, Section 3023.b). Few people know how to do this. In bilingual programs, pupils are to be taught in their native language until they possess speaking, reading, and writing skills comparable to their English speaking peers [Education Code (E.C.) 52164.6]. Deciding when the "magic moment" arrives is extremely difficult. There are of course exceptions to the rule, but these exceptions are not often clarified in the education code.

Legal requirements also create disagreements among school staff. Some teachers find themselves defending programs because they were hired to implement the program, although they may not personally agree with the way the law is written. Then, when teachers communicate to parents, they may unknowingly share their frustrations and biases toward certain programs.

Some of these problems might be alleviated if teachers and parents understood the rationale for certain requirements and how such requirements are intended to resolve problems, and not create problems. Ultimately, schools are society's great equalizers of pupils differences. Individual and group rights must be protected for the common goal of equal education.

The goal of public education extends not only to those pupils willing and able to learn quickly, but also to those unable to learn unless special assistance is provided. Specially funded programs like bilingual education and special education facilitate the transition of these pupils from requiring special assistance to being able to profit from general education. However, such bridges require human cooperation and resources. Linguistic and cultural differences should not be an obstacle to fair and equal educational opportunities.

Identifying LEP Pupils for Special Education

Language Difference or Learning Disability?

It is difficult to decide on the cause of a learning problem. Some students lag behind academically because they lack interest in school. Others have difficulty learning in a traditional classroom because of a learning disability. Some students suffer academic deficiencies only temporarily while they acquire a new language; learning English enables communication and demonstration of skills previously learned in the native language. The classroom teacher often wants to know how to examine causes of poor performance so that instruction can be modified and become more meaningful.

For the LEP pupil, the fact that the student is learning a second language may cause temporary academic deficiencies. It is not uncommon for a newly arrived immigrant child to lag behind in every subject except math. Almost any subject which requires knowledge and command of standard English is an area in which the student falls behind. Yet, what happens when the child continues to lag behind, even after participating in a classroom for five to six years?

When does the cultural background no longer constitute a valid explanation for poor performance in school? The law in special education requires that the normal process of learning English as a second language not be misdiagnosed as a handicapping condition (CAC Title 5, Sec. 3023.b). This provision was enacted to protect LEP pupils from being placed in special education only because they perform poorly on standardized tests in English. It is critical to distinguish between a true learning disability and the normal developmental process of acquiring English as a second language. (Refer to Volume 2 in this series *The Nature of Bilingualism* for an in-depth discussion on this issue.)

Described in Figure 2 are four different types of bilingual pupils. The first column describes four different bilingual learners. Each bilingual pupil has a different degree or proficiency to speak English. Pupils also differ in the type of schooling they received in their native language. Generally, the more schooling in the native language, the more conceptually developed language and cognition will be. Research has supported the notion that one learns to read only once, because cognitive skills transfer from one language to another. It reasons then that immigrant pupils who have extensive schooling in their native language will learn English quickly and demonstrate academic and cognitive skills previously learned in their native language.

The second critical issue is how student performance appears based on standardized tests or assessments. The second column describes how the pupil might score on a test of general academic achievement such as the Wide Range Achievement Test (WRAT) or individual intelligence tests such as the Weschler Intelligence Scales for Children (WISC-R). Pupil achievement often varies depending on which language is used to solicit responses. For this reason both

English and Primary language performance indicators are identified. If a pattern of low performance is evident in both languages for a sustained period of time, then chances are that optimum learning is not occurring because of a learning disability or other handicapping condition.

The third column identifies *potential* causes which could be contributing to poor school performance. The type of bilingual student, prior schooling, and how a pupil scores produce a picture which can assist in making placement decisions.

Factors to Consider in Placement Decisions

Types of Bilingualism	Performance	Factors Contributing To Poor School Performance
1) Limited English (immigrant)	Low English skills High native language skills.	Insufficient opportunities to learn English as a second language.
2) Balanced Bilingualism	Similar proficiency in English and native language; low academic achievement in both.	Underdeveloped skills in native language. Insufficient opportunities to learn English as a second language.
3) Dominant English (low primary language)	Low native language skills. High English skills, but low academic achievement in English.	Too early transition to English may have hurt achievement.
4) Limited language learner	English skills and native language skills low.	True learning disability or history of instruction that did not address their bilingualism.

Notice, the first pupil is clearly limited in English and consequently scores low on academic measures in English. Given a test like the WISC-R, performance might be higher on the non-verbal performance section than on the verbal section. Performance scores are a better index of academic potential than verbal scores because the pupil lacks exposure to English.

Verbally loaded test items require a command of English which is clearly beyond what newly arrived immigrants can do. The newly arrived immigrant pupil will not be able to score well on tests which require a high command of the English language. However, lack of performance in English is not equal to lack of intelligence. The newly arrived immigrant pupil should not be expected to score

well on any measure that requires knowledge of American culture, values, and formal schooling in English. Unless the assessor is able to notice a severe performance limitation, referral for special education services should not occur until the pupil has participated in the regular school program for a reasonable length of time. Researcher Jim Cummins (1984) recommends that two years is a minimum for evaluating student performance in the regular education program.

Some *immigrant* pupils, while limited in English, score quite well on academic measures in their native language. They perform well because they have had prior schooling in their native country. Depending on when the pupil is tested, English skills will be lower than skills measured in the native language. This will change as the student progresses from being *monolingual* to *bilingual*. As oral skills in English improve, so will verbal scores as measured on standardized tests.

The immigrant pupil who is progressing normally in acquiring English should not be referred for special education until a learning problem is well confirmed by test scores and performance out of school, especially in the home. Important clues about potential learning problems include poor performance in the native language which is also evident in English. A bilingual assessor should be used to verify and interpret culturally relevant behavior before making a referral for special education services.

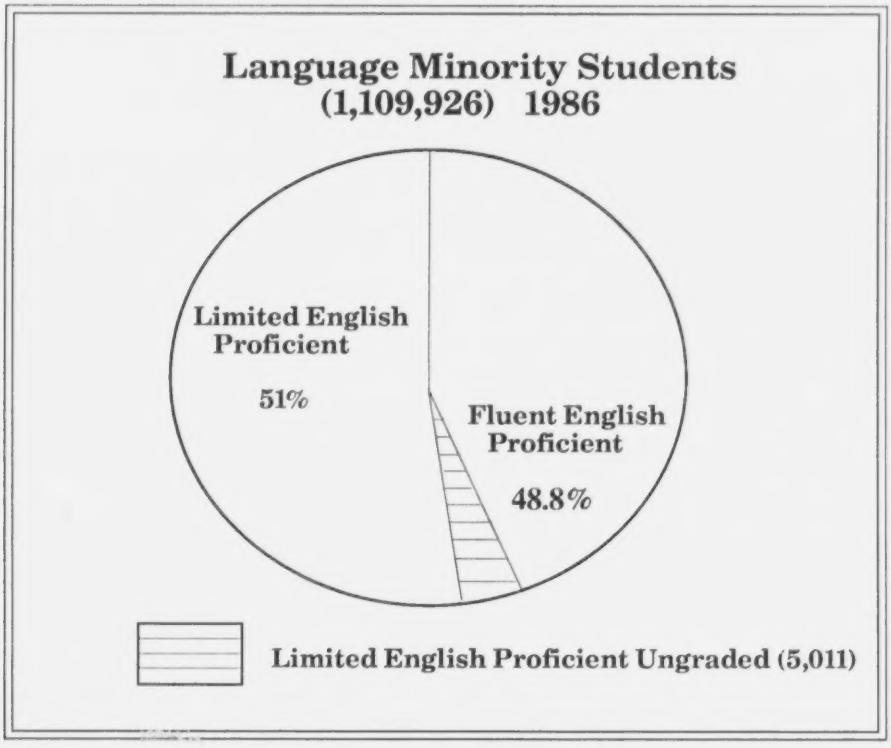
The next pupil type is the *balanced bilingual* who is equally proficient in both languages. The balanced bilingual may be achieving low in both primary language and English language. Another type of balanced bilingual achieves better in the primary language than English language, but still achieves below grade level. This is where a true learning disability is hard to detect. Eligibility criteria requires Individualized Education Program teams to determine if a discrepancy exists between a pupil's academic achievement and intellectual capability. Many LEP pupils' performances are not accurately measured on tests because of proficiency in the native language and the influence of learning English as a second language. In order to rule out non-primary language variables, alternative assessment measures are needed. The law and regulations allow schools to use alternative assessment instruments to measure pupils' educational and intellectual capabilities.

The pupil who is *dominant English but is performing below grade level in English* may also be a candidate for special education. This pupil typically scores low on tests in the native language. On standardized tests in English, this pupil performs below grade level in core academic subjects. Oral English skills are developed fully enough to classify this pupil as an English dominant speaker but grade level proficiency has yet to be mastered.

The last and most complicated type of bilingualism is the *limited language learner* who performs poorly in both languages. This pupil generally has a long history of academic failure. An obvious disability like a speech delay, mild mental retardation, or some other disfunction might be present. Typically the limited language learner qualifies for special education services.

Pupils who score low in both languages represent a small number of the total language minority population. One environment that serves the limited language learner is the special day class. As illustrated in Figure 3, the majority of LEP pupils *are not in an ungraded classroom.* Only 5,011 LEP pupils were reported in 1986 to be in special day classes. Ungraded special day classrooms typically serve students who have the more severe learning disabilities.

Figure 3



Research done by Cummins (1984) suggests that very few LEP pupils are limited in both languages. This population while small in size, often constitutes the biggest challenge to special education and the speech and language specialist. Special education teachers often want to know which language should be used for instruction, since both are delayed or impaired. Answers to these and others questions have yet to be fully researched. Special educators should be careful not to place students into this category only because proficiency in the native language is low. This may be due to what language the child received instruction in rather that the capacity to learn cognitively.

Even for the pupil who scores low in both languages, the quality of the prior instructional program should be reviewed before placement is made in special education programs. This ensures that patterns of disabilities be firmly evaluated and documented. Even for the more severely handicapped, the issue of second language interference is not absent. For example, a study done by Twomey (1980) found that the Individualized Education Programs for LEP pupils failed to provide

English as a Second Language (ESL) or assistance in the pupil's native language. Failure to provide necessary instruction could have exacerbated the learning problem.

When provided with effective instruction, learning gains may occur without special education. Research done on underachieving pupils (Deschler, 1984) describes how similar the learning disabled population is to underachieving pupils. The two groups are nearly identical using standardized test scores. Deschler has found that both groups benefit from the instructional techniques used with learning disabled pupils even when the underachieving pupils are not truly handicapped. This research has tremendous implications, especially for Hispanic and Black students who are statistically overrepresented among underachieving pupils. These pupils could benefit from special education methodology even though they are not by definition learning disabled.

When to Make a Referral

Understanding the true learning abilities of pupils is any teacher's dream. Teachers want this information so they can better plan instructional programs tailored to meet individual needs of pupils. The most difficult challenge is to sort out the true disability from a temporary disadvantage in learning. For LEP pupils, teachers want to know if low academic performance is attributed to a true disability or to a language difference. Such separations while required in law (CAC, Title 5, Sec 30023.b) are not easy to identify because pupils differ in ability, aptitude, and learning styles. Tests or assessment instruments also become a problem because they do not always measure what they claim to measure. Generalizations about tests' predictive value are limited for LEP populations. Standardized tests also give invalid scores which are interpreted as valid and then may lead to wrong decisions. These are common problems when trying to sort out a true disability from a temporary disadvantage in learning because of being LEP.

One process used today to help distinguish a true disability from an academic learning problem is the *Student Study Team* process. Student Study Teams are a combination of regular education teachers who work with specialists to brainstorm ways of helping students with problems. The team meets and discusses the pupil's strengths and weaknesses, then develops an intervention plan. The key elements of a successful Student Study Team are parent and student involvement. When Student Study Teams include a bilingual teacher or specialist familiar with the process of second language acquisition, the system can be used to rule out the effects of English as a second language. The bilingual specialist can also make certain the parent of the pupil is actively involved in the process and feels like an equal partner during the meeting. Even when an English speaking under-achieving pupil is referred for assessment, the Student Study Team process should be used. All possible resources must be considered and, if appropriate, used before special education placement is considered. This includes the quality of the regular education program and what modifications might be used to enhance learning for the pupil who needs extra help.

Parallel of Bilingual and Special Education

This next section contains a summary of California state bilingual laws* (left side) and California state special education laws (right side). Under each topic area, specific sections of law have been selected for discussion. As you read the chart, each section presents both sides: bilingual and special education. Some of these sentences have been slightly reworded for the benefit of the reader. For a complete listing of the law, refer to the legal citations in the reference. After the parallel of laws, a discussion follows which describes similarities and differences about the laws.

PARALLEL OF LAWS

Purpose

Bilingual Education	Special Education
Former E.C. Part 28 Ch. 7 Art. 3 reinstated by Section 62002	E.C. Part 30 and related laws
To provide *equal* educational opportunities to children who are limited English proficient. (Former E.C. 52161)	To provide *appropriate programs* and services designed for children to meet their needs under PL 94-142. (E.C. 5600)

Goals

Bilingual Education	Special Education
To *effectively* and as *efficiently* as possible develop *proficiency* in *English*. Programs shall also provide positive reinforcement of self-image, promote crosscultural understanding, and provide equal opportunity for academic achievement, including when necessary, academic instruction through the primary language. (E.C. 62002)	To ensure that special educational instruction and services are provided to *all individuals* with exceptional needs. To insure individuals of their right to a free appropriate educational opportunity to meet their unique needs. (E.C. 56000)

*Note: Effective June 30, 1987 Provisions of (E.C. 52161) Bilingual Education ended with the "Sunset provision of E.C. 62000.2." The Department of Education issued a program advisory giving advice related to the operation of the Sunset provisions. Please refer to the Advisory on page 49 for a detailed account of the general consideration for operating bilingual education programs.

California school districts are required "to offer bilingual learning opportunities to each pupil of limited English proficiency enrolled in the public schools."

California school districts are required "to provide adequate supplemental financial support" in order to offer such bilingual learning opportunities.

"Insofar as the individual pupil is concerned, participation in bilingual programs is voluntary on the part of the parent or guardian."

Pupil Identification

Bilingual Education

Determine the *primary language* of each pupil using a home language survey, then assess the pupil's English language proficiency (comprehension, speaking, reading, and writing) within 30 days.
[Former E.C. 52164.1 (a)(b)]

Special Education

Determine which pupils have *exceptional needs* by:
- Establishing a child find system.
- Initiating a referral process that includes informing parents, teachers, agencies, and the public.
- Implementing a procedure for individual assessment of students referred for special education services. (E.C. 56302)

Diagnosis / Assessment

Bilingual Education

Conduct an *assessment* in the pupil's primary language to include speaking, comprehension, reading, and writing skills. [E.C. 52164.1(a)(c)]

Special Education

Place only after an individual assessment of pupil's needs is done which include:
- Pupils are *assessed in all* areas related to the suspected disability.

Complete diagnostic assessment within 90 days after initial enrollment. (Any tests may be used).

Testing in the primary language is required only to the extent appropriate instruments are available or, at a minimum, informal diagnostic data. (E.C. 62002)

Test instruments and procedures are:

- Selected and administered so as not be racially, culturally or sexually discriminatory.
- Are administered in the pupil's primary language...
- Are valid for the specific purpose for which they are used.
- Are administered by trained personnel...who are competent in both the oral and written skills of the individual's primary language. (CAC, Title 5, Sec. 3023)

Placement

Bilingual Education

Provision of adequate practices procedures, resources, qualified personnel, and staff development necessary to implement the general purposes of former Section 52161.

Each LEP student whose diagnosis makes academic instruction through the primary language necessary receives such instruction. (E.C. 62002)

Each LEP student receives a program in English language development in order to develop proficiency in English as effectively and efficiently as possible. (Former E.C. 52163)

Special Education

Each individual with exceptional needs must have an IEP which contains:

- Present level of educational performance
- Annual goals
- Specific special education to be provided
- Extent of participation in the regular education program
- Projected initiation dates
- Provision for transition into the regular classroom, etc...

The IEP must contain for pupils whose primary language is other than English:

- Linguistically appropriate goals, objectives, programs, and service (For definition of linguistically appropriate goals, see CAC, Title 5, Sec. 3001.1)

Annual Reassessments

Bilingual Education	Special Education
Monitoring of the progress of each student toward developing both "fluency in English" and "academic" achievement" by means of adequate testing and evaluation. (Section 62002; former Section 52161)	Assess pupil's progress and appropriateness of placement at least annually. Any review must follow similar procedures used when student was initially identified. (E.C. 56380)

Redesignation / Decertification

Bilingual Education	Special Education
LEP pupils are redesignated as Fluent English Proficient (FEP) when they have demonstrated English proficiency and academic achievement. (E.C. 62002)	Reassessments are required once every three years. If necessary, a new IEP is developed. (E.C. 56381) (A pupil can be reassessed for special education at any time.)

Parent Notice and Rights

Bilingual Education	Special Education
Provision of a procedure which ensures that the "participation of each student in bilingual programs is voluntary on the part of the parent or guardian." (Former Section 52161; Section 62002)	When a pupil is referred for assessment, the parent must be notified within 15 days and a copy of the assessment plan must be attached. Parent permission is required for assessment. Eligibility for special education is determined in an IEP team conference which includes the parent. (The parent has the ultimate authority to accept or reject the recommendations by the IEP team.)

Advisory Committees

Bilingual Education

When there are 51 or more LEP pupils in a district, a parent advisory committee must be formed. Every parent shall be informed about their right to participate in the committee. (Former E.C. 52176)

Special Education

Each special education local plan area must establish a Community Advisory Committee (CAC). Parents shall be notified of their opportunity to participate in the Community Advisory Committee. (E.C. 56190)

Waivers

Bilingual Education

There are no longer state provisions for bilingual teacher waivers.

The Commission on Teacher Credentialing has informed the Department of Education that they believe the current requirements for bilingual credential may still be in effect in certain situations. A legal opinion has been requested from the State Attorney General.

Special Education

Anyone may apply for a waiver if compliance would prevent a free and appropriate public education or an undue hardship. (E.C. 56728.6)

A teacher who does not possess the necessary special education credential may obtain a waiver.

Data Reporting

Bilingual Education

Each LEP pupil must be reported on the FEP annual census, including bilingual special education pupils. (Former E.C. 52164)

Special Education

Each pupil with exceptional needs must be reported by race, handicapping condition, and instructional setting.

Inservice Training

Bilingual Education

School districts must "provide for inservice programs to qualify existing and future personnel in the bilingual and crosscultural skills necessary to serve the pupils of limited English proficiency of this state."

The Bilingual advisory committee must receive training to assist members in carrying out their responsibilities.

Special Education

Staff development programs must be "provided for regular and special education teachers, administrators, certificated and classified employees, volunteers, community advisory committee members and, as appropriate, members of the district and county governing boards. Such programs shall be coorrdinated with other staff development programs in the district, special education services region, or county programs authorized by state and federal law." (E.C. 56240)

Discussion

Purpose of Laws

Both bilingual and special education laws were enacted because discrimination occurred on the basis of race, language and handicapping conditions. The Civil Rights Act of 1964, the Supreme Court decision in *Brown v. Topeka (1954)* and the Equal Education Opportunity Act (1974) led the state legislature to enact California state bilingual law (AB 507, 1976). The legislature recognized that a person's physical or mental state or language ability should not constitute unequal treatment or denial of an equal educational opportunity. To ensure *fairness*, special legislation was passed which requires districts to follow procedural safeguards and to provide special instruction not based upon the receipt of special funds. Districts are required to comply with state statutes and pertinent regulations adopted by the State Board of Education.

Equity is defined in bilingual programs as a mode of instruction which considers the pupil's native language. The important concept is how instruction is delivered to pupils. To illustrate this point, examine what the Supreme Court stated when it ruled in the famous *Lau v. Nichols* Supreme Court decision of 1974:

> **...There is no equality of treatment merely by providing pupils with the same facilities, textbooks, teachers, and curriculum...for pupils who do not understand English are effectively foreclosed from any meaningful education.**

In the Lau case, Chinese speaking pupils were expected to learn English without any special help. Students were not given support to acquire English, nor were they given assistance in their native language. A pupil's inability to speak and understand English should never exclude the pupil from effective participation. To correct this, instruction should be delivered in a manner or mode which is meaningful. While English is being acquired, instruction should occur in the primary language to maintain achievement until transition into English fluency occurs.

In special education programs, the concept of equity expands to not only how instruction is provided, but also where it is provided, by whom, and what exactly is provided. From this perspective, special education is more comprehensive in scope than bilingual education. The IEP must describe these components. The IEP must also specify when transition into the regular program should occur. In summary, both bilingual and special education protect those who have unique needs from discrimination. Both programs attempt to equalize the unequal traits which contribute to different treatments. The programs differ in the methods they employ: bilingual education emphasizes *how* instruction is delivered and special education emphasizes *how, what, when,* and *where.*

Pupil Identification

In bilingual programs, pupils are *identified* based on language proficiency. In special education, identification procedures include systematic methods of utilizing referrals of pupils with needs that cannot be met with modification of the regular instructional program (E.C. 56302).

State bilingual law requires that a home language survey be completed for all children upon enrollment (Former E.C. 52164.1). Responses on the survey allow schools to group pupils by language used in the home. Those pupils who speak a language other than English in the home are then tested to determine the degree of proficiency in English and in their native language. Districts must use the test approved by the California Department of Education when determining English language proficiency (Former E.C. 52164.1).

In special education there is no such parallel. Pupils are first referred for assessment, then an assessment plan is written. Parental consent is sought before any tests are administered.

To summarize, the purpose of assessments differs in bilingual and special education. Individual assessments occur when pupils are being considered for special education instruction and services, whereas initial bilingual assessments are specifically geared to determine which pupils have a weak command of the English language. Referrals are also done differently by both programs. Pupils are not referred for bilingual education, but in special education there is a referral process. In special education, referrals are made by anyone who suspects a learning problem. Under bilingual law, pupils are automatically grouped based on how parents fill out the home language survey. Once pupils are determined to be eligible for program services, specific funds are provided to help off set the costs of services.

Diagnosis/Assessment

While these terms are often used synonymously, they have different meaning with respect to bilingual and special education programs. *Diagnosis* as used in bilingual law refers to the procedure of comparing pupils' academic skills in both English and the primary language, then determining the language of instruction. The comparison of a student's proficiencies can be done by using parallel assessment instruments. As stated in bilingual law:

> **...the results of the parallel assessment shall determine the extent and sequence in which English and the primary language will be used in the instruction of basic skills. (Former E.C. 52164.1)**

The term "diagnosis" as used in bilingual law does not carry the same meaning as "diagnosis" in special education law. *Diagnosis* as used in special education usually involves an analysis of the problem and the development of

solutions. The diagnostic step in bilingual law is more of an information gathering step. This information should help select the language used for measuring ongoing pupil progress. There should be a match between the language designated for basic skills instruction and the tests selected to measure a pupil's progress. For example, if a Spanish speaking pupil receives basic skill instruction in Spanish, then achievement testing done at the end of the year should be done in Spanish.

In special education, the *assessment* not only covers a broader content, but it also includes procedural safeguards to protect against test bias and discrimination. According to law [E.C. 56320 (a-e)], the pupil is assessed in all areas related to the suspected disability including where appropriate: health and development, vision, hearing, motor abilities, language function, general ability, academic performance, self-help, orientation and mobility skills, career and vocational abilities and interest, and social and emotional status (E.C. 66320). In addition, there are procedural requirements that protect pupils against test bias, inappropriate tests selection, test validity, and how tests are administered [E.C. 56320 (a-e)].

The information obtained during the assessment phase is used to determine eligibility for special education, whereas the diagnostic assessment required under bilingual law does not affect eligibility. The diagnostic assessment in bilingual law should be used to decide the language of basic skill instruction. This is an important step because assessment personnel can then refer to this information if the pupil is later referred for assessment. Many districts fail to implement this section of the law according to compliance reviews done by the California State Department of Education (Task Force Report, 1983).

Placement

Bilingual program placement occurs after initial identification. The placement varies depending on the districts program for limited English proficient pupils.

As mentioned earlier the specific program requirements in A.B. 507 Sunset June 30, 1987 are no longer in effect. However, the district must still meet minimal state requirements, E.C. 62000 which reinstate certain provisions of A.B. 507, and federal requirements, including the United States Supreme Court decision. The federal cases which have interpreted 20 U.S.C. Section 1703(f) establish a three-part analysis of whether "appropriate action" is being taken to eliminate language barriers impeding the participation of LEP students in a district's regular instructional program. It is that:

- The educational theory or principles upon which the instruction is based must be sound.

- The school system must provide the procedures, resources, and personnel necessary to apply the theory in the classroom. That is, the programs actually used by the school system must be reasonably calculated to implement effectively the educational theory adopted.

- After a reasonable period of time, the application of the theory must actually overcome the English language barriers confronting the students and must not leave them with a substantive academic deficit.

Special Education Placement

In special education programs, placement decisions are left entirely up to the IEP team. Pupils are placed in the most appropriate program designed to meet unique individual needs. Both federal and state regulations mandate the provision of:

> **...a full continuum of program options to meet the educational and service needs of individuals with exceptional needs in the least restrictive environment. (E.C. Part 30, Ch.1, Art. 2, Sec. 56031)**

The concept and requirement of the least restrictive environment is not found in bilingual law. Special education, however, must be an integral part of the total public education system and should not be used to isolate, segregate, or give pupils unequal treatment because of a handicapping condition. When the IEP team meets to decide the most appropriate placement, the least restrictive environment must be considered.

Annual Reassessments

The key difference between the annual reassessments done in bilingual education compared to special education is *purpose*. In bilingual education, the annual reassessment gauges how the pupil is progressing in language arts, reading, writing, and mathematics (Former E.C. 52171.6; CAC Title 5, 4311). In special education, the annual review looks at every aspect of how the pupil is progressing, and reviews the appropriateness of placement. Special education must seek the least restrictive environment. The annual review also determines if a change in placement is necessary.

In contrast, bilingual pupils are not reassigned until they meet the reclassification criteria established by the district. The annual review only involves progress in certain subjects and does not affect placement. However, the annual review for bilingual education may indicate when a child might be ready to be reclassified from LEP to FEP.

Reclassification

Both reclassification and decertification accomplish the same goal: changing services because the pupil no longer needs the service. The pupil's status changes which affects eligibility for special assistance. For the reclassified LEP pupil, this means that the pupil is no longer LEP and is not eligible for services. For a student with exceptional needs, the same applies. Reassessments for special education are required once every three years. Reclassification and three year reviews for special education can be coordinated to reduce duplication of paperwork. When the LEP student is reevaluated, reclassification criteria can also be reviewed. However, it is possible for a pupil to lose LEP status but still be eligible for special education and vice versa. The two criteria, while similar in *intent,* do not substitute for each other. Each program makes these decisions according to the criteria set forth in law.

Procedures to Follow for LEP Pupils

From Referral to Placement

What happens when an LEP pupil experiences repeated failure in the regular school program, and, despite efforts to improve the learning environment, failure continues? The previous sections of this handbook focused on what the law requires and how to avoid mistaking a language difference from a learning handicap. The next section presents steps from the point of referral to placement. Legal requirements are intertwined with recommendations for implementation. The following procedural steps are summarized in Figure 4 and are described in the following section.

Step One: Determine if a language other than English is used in the home

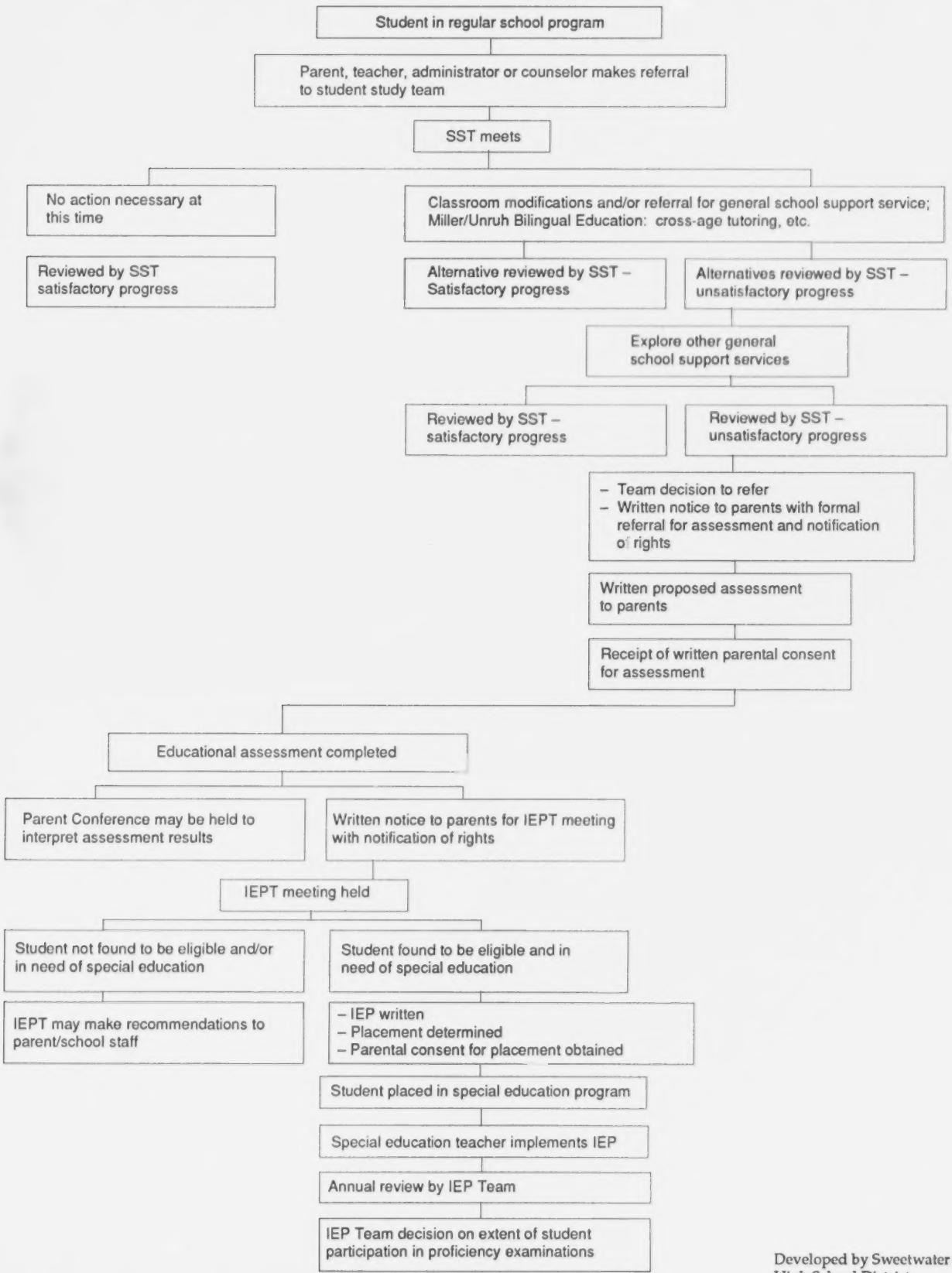
Using the home language survey, solicit information from the parent about the language used in the home. If any response is positive, the pupil's proficiency in English will need to be assessed.

When assessing English proficiency, some pupils may need an alternative instrument or procedure because of a handicapping condition. Alternative instruments are permitted but should only be used when the handicapping condition interferes with the tester's ability to measure English proficiency. Examples of these exceptions are severe oral language delay, severe mental retardation, or a visual handicap. To obtain permission to use alternative assessment procedures, contact: California State Department of Education, Program Evaluation and Research Office, 721 Capitol Mall, Sacramento, 95814, Attention Dan Zuckerman.

Step Two: Determine proficiency in English

Using the test(s) designated by the California State Department of Education, Program Evaluation and Research Office, determine the degree of proficiency in English. If the pupil demonstrates oral fluency based on the test criteria, and is in grades K-2, the pupil may be designated fluent English proficient (FEP). For all other pupils, assessment of reading and writing skills in English must occur. If the findings of these assessments indicate proficiency in English, the pupils are identified as FEP.

Coordination Between Site Level Student-Process and Special Education Referral


Student in regular school program
Parent, teacher, administrator or counselor makes referral to student study team
SST meets
No action necessary at this time
Reviewed by SST satisfactory progress
Classroom modifications and/or referral for general school support service; Miller/Unruh Bilingual Education: cross-age tutoring, etc.
Alternative reviewed by SST – Satisfactory progress
Alternatives reviewed by SST – unsatisfactory progress
Explore other general school support services
Reviewed by SST – satisfactory progress
Reviewed by SST – unsatisfactory progress
– Team decision to refer
– Written notice to parents with formal referral for assessment and notification of rights
Written proposed assessment to parents
Receipt of written parental consent for assessment
Educational assessment completed
Parent Conference may be held to interpret assessment results
Written notice to parents for IEPT meeting with notification of rights
IEPT meeting held
Student not found to be eligible and/or in need of special education
IEPT may make recommendations to parent/school staff
Student found to be eligible and in need of special education
– IEP written
– Placement determined
– Parental consent for placement obtained
Student placed in special education program
Special education teacher implements IEP
Annual review by IEP Team
IEP Team decision on extent of student participation in proficiency examinations

Developed by Sweetwater Union High School District

One word of caution on the limits of oral English proficiency tests. When oral language tests are developed, test makers attempt to elicit performance that is representative of oral English used by school aged children in classrooms. However, not all tests correlate highly with the type of language skills expected of native English speakers. Carefully analyze the properties of the tests before making a selection. Some tests approved by the Department of Education have certain limits. A status report on Oral English Proficiency test undertaken (1982) by Ramirez, Merino, Bye and Gold, contains useful information about the limits of specific tests and recommends methods of compensation for certain deficiencies in tests.

When assessing reading and writing skills, districts can select any instrument or procedure. Some recommendations are:

- **Use standardized tests of basic skills required under proficiency law.**
- **Use individual achievement tests.**
- **Use criterion reference tests tied to the curriculum.**
- **Use writing or reading mastery test scores.**

If an LEP pupil is unable to take a written test, the district can use an alternative means or alternative instrument to assess English proficiency skills. For example, a blind LEP pupil would not be able to take a written paper and pencil test. Changing the test and how it is administered is permitted according to state bilingual law.

Step Three: Determine proficiency in the primary language

Testing in the native language occurs at this step. The purpose of diagnostic assessments is to determine proficiency in the native language. The pupil is assessed in speaking, reading, writing, and comprehension areas. Districts can choose any instrument to measure these areas. The most common practice is to use the native language version of a test written in English. The results of the diagnostic assessment should then be compared to results of performance in English. Upon careful review, the teacher and test administrator designate what language will be used for basic skills instruction. This information should be included in the assessment plan if the LEP pupil is referred.

Step Four: Document modification of regular education before making a formal referral for assessment

A pupil should be referred for special education instruction and services only after the resources of the regular education program have been considered and utilized where appropriate (E.C. 56303). Any modifications of the regular education program for an LEP student being considered for assessment must be fully documented. Using the Student Study Team process can greatly facilitate this process.

A Student Study Team (SST) composed of the referring teacher, the principal, student, parents, and appropriate support staff which may include the bilingual teacher and aide, counselor, psychologist, or speech and language specialist can jointly explore other regular education resources and programs. The SST may also prove helpful in the process of determining the causes for lack of student achievement. The SST allows teachers and support staff an opportunity to exchange ideas in order to make effective modifications of the language minority student's educational program. If these modifications have been tried without success, a student should be referred for special education services.

Step Five: Make referral for assessment

Once a referral is made, the timelines specified in special education law begin. The assessment plan for the LEP pupil should contain the results of prior assessments, including the designation of language status (LEP or FEP), degree of proficiency in the primary language, and which language was used for instruction. The assessment plan should also specify which tests will be administered in the primary language. When it is not feasible to test in the primary language, specify what alternative means will be used to measure the pupil's progress. Alternative means can include observation, interview by native speaker, non-verbal tests, etc.

Explain the assessment plan to the parent before any tests are administered. Be sure that documentation is made of permission granted. Once approval has been obtained, testing can begin.

Step Six: Establish purpose for assessment and conduct assessment

Three possible purposes for assessment include: determining eligibility, classifying pupils, and placement. The IEP team decision-making process, as required in special education law, is the best procedure which meets all three purposes. However, when an LEP pupil is being assessed, the composition of the IEP team should include a person who 1) speaks the pupil's primary language, 2) is knowledgeable about the pupil's performance in relation to their peers and siblings and, 3) is knowledgeable about cultural habits, values, and other factors which influence learning patterns or styles. By augmenting the IEP team with such a person, better decisions can be made.

One error to avoid is using inadequate or invalid data during the IEP team meeting. Data can be invalid either due to the instrument used or the procedure used to collect information. Either the test or the tester can invalidate data collected.

Issues to be aware of include norming, reliability and validity. Most tests do not contain adequate norms for LEP pupils. According to Figueroa (1985), even when norms have been obtained on LEP pupils (Mexico City WISC-R) they may not be appropriate. Reliability is effected when tests are administered differently by different people. The most common error is having a translator verbally translate sections of the test so the LEP pupil understands in their native language. When this is done, the test is no longer reliable. This is the least effective method for obtaining performance data on LEP pupils in their native language.

Tests must also test what they claim to test. Validity is determined by how well the test measures what is previously defined and conceptualized in the test. For all pupils, there should be a match between what has been taught and what is being tested. This is especially important for LEP pupils who have limited time in the United States and have no prior schooling. Indochinese refugees from war-torn countries are examples of populations who have not had adequate time to learn what is measured on standardized tests. All attempts should be made to reduce content bias due to lack of instruction or exposure. The more different the culture is from Western American culture, the more item bias in tests.

Qualified bilingual examiners also influence the assessment process. A qualified person as described in CAC, Title 5 regulations "is competent in both the oral and written skills of the individual's primary language or mode of communication and has knowledge and understanding of the cultural and ethnic background" (CAC, Title 5, Sec. 3023). The bilingual teacher who has proper certification can be used to conduct assessments in achievement and in testing language proficiency. The bilingual teacher can also administer diagnostic tests in basic skills to ascertain how the pupil has progressed in the bilingual program. Gathering performance data in the native language forms the comparison which can later help distinguish between a disability caused by lack of exposure to English or a disability in both languages.

A psychologist or speech and language specialist who holds a bilingual certificate of competence in assessment is ideal for LEP assessments. This certificate demonstrates that the person is competent in both oral and written skills of a language other than English, knows and understands the cultural and historical heritage of the LEP pupil, and knows how to use instruments and other techniques appropriate to evaluate LEP pupils (E.C. 56362.7). The Commission on Teacher Credentialing can be contacted for more information about competency certificates.

Lastly, the IEP team should include the parent of the pupil and a translator, if necessary. The translator should be present during the meeting to help the parent feel comfortable about contributing information. Establishing good rapport with the parent can lead to improved decisions and shared responsibility. Avoid at all costs, making decisions *before* the actual IEP meeting. If the parent perceives that decisions have already been made, they will feel less inclined to contribute information and share in implementing the IEP.

Step Seven: Coordinate instructional services when the pupil qualifies for both bilingual and special education

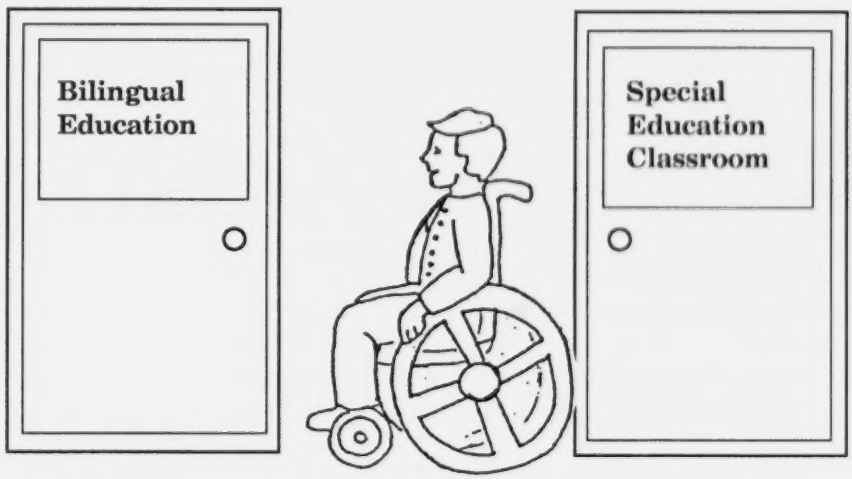
Here are three ways the instructional program can be coordinated for the LEP pupil who is placed in either a special day class (SDC), which is a self contained classroom taught by a special education teacher all day, or the resource specialist program (RSP) which is a "pull-out" or partial class assignment:

- **RSP and self contained bilingual class**
- **RSP and individual learning program**
- **SDC and individual learning program.**

In the first example, the pupil is in both a special education program and a bilingual program. Coordination of the curriculum, teaching methods, and testing is critical for dual program placement. Both teachers should meet regularly and establish complimentary learning strategies for the pupil. Figure 5 illustrates the coordinated services.

Figure 5

Coordinated Services Model
RSP and Self Contained Bilingual Class

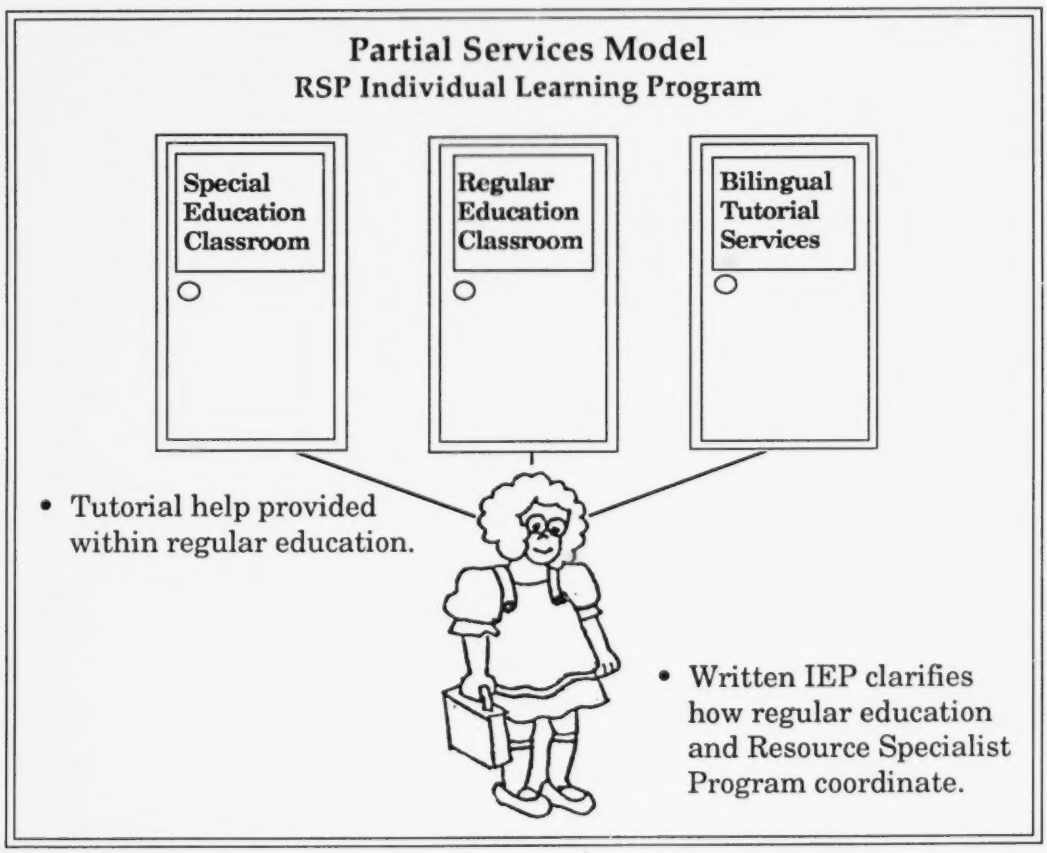


- Special Education placement includes Regular Education
- Bilingual teacher or aide coordinates within special education class or program.
- Written IEP contains linguistically appropriate goals delivered within bilingual classroom.

The coordinated services model builds on teaming the bilingual teacher and the special education teacher together to deliver the IEP. The written IEP contains linguistically appropriate goals which are delivered within the regular classroom. Consultative teaching and demonstration teaching are examples of how the resource specialist can work within the regular bilingual classroom. The written IEP should describe linguistically appropriate goals in terms of joint placement in both programs.

In the second example, a bilingual teacher is not available, and the pupil receives tutorial help while also receiving special education. In many cases the LEP pupil is "pulled out" of the regular class to receive bilingual tutorial help and then "pulled out" again for special education. Dual "pull-out" can lead to a disjointed program that in the long run perpetuates underachievement. Figure 6 illustrates the partial services.

Figure 6

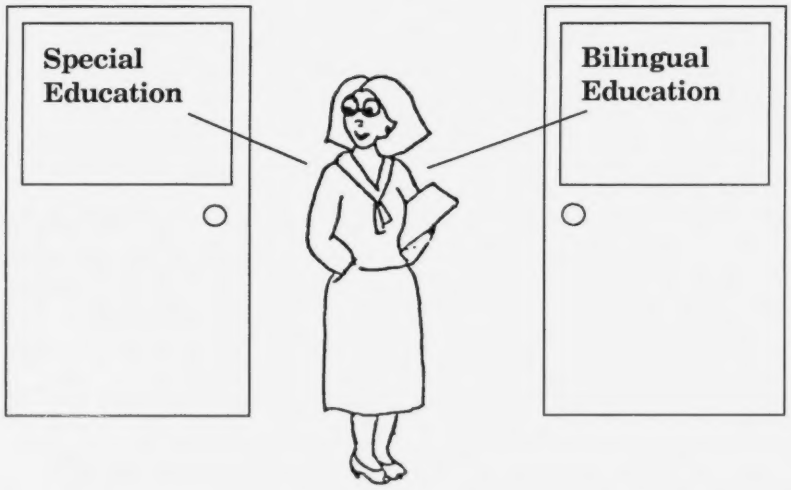

Partial Services Model
RSP Individual Learning Program
Special Education Classroom
Regular Education Classroom
Bilingual Tutorial Services
• Tutorial help provided within regular education.
• Written IEP clarifies how regular education and Resource Specialist Program coordinate.

The partial services model places more emphasis on the regular classroom without bilingual services. If bilingual services are provided, they should be delivered within the regular education classroom to avoid excessive "pull out." Planning must occur between the regular teacher and the support programs to guard against disjointed curriculum and instruction. The written IEP should consider problems of coordination so that the support programs work closely with the core program, minimizing "pull-out" to once a day if possible.

The last example requires bilingual assistance within the special class. This may be for as little as two hours a day or longer depending on individual needs. Figure 7 illustrates the Fully Integrated Model.

Figure 7

Fully Integrated Model
SDC and Individual Learning Program



- Cultural and linguistic factors are a part of special education.
- Written IEP emphasis is on core curriculum and independent living or functional skills.

The fully integrated model is for students who have severe handicapping conditions where placement in the regular classroom is not possible. In this example, special education becomes the full-time placement for the student. Any core curriculum is infused into the special class environment. The curriculum might also include functional skills and independent living skills. The teacher in this model should be trained to work with culturally and

linguistically different students so that "pull-out" is not necessary unless the student can benefit from such service. All instruction is guided by the IEP and developed by the IEP team. Bilingual resources follow the LEP pupil even if they are in a special class. EIA LEP funds can and should be used to support the LEP pupil who is in a special class placement.

There are, of course, other combinations of services and placements in addition to the ones described here. These examples were selected as over 75 percent of all special education students are learning disabled and over 75 percent receive instruction through the resource specialist program. The guiding principle of any program is to consider the individual pupil's needs first, then match resources to meet individual needs. The LEP pupil has the right to continue to receive bilingual assistance and special education concurrently. Eligibility for one program does not end once eligibility for another program is established.

Step Eight: Coordinate the triannual review for special education and redesignation required under bilingual law.

Both the triannual review and reclassification can be met in one step by the same team provided all the necessary information has been collected. The team can review, revise, and terminate either special education or bilingual services if the pupil has made substantial progress, and no longer needs the program services. If the pupil can benefit from the regular classroom and meets regular performance standards, re-evaluation should be considered. One team can do both the triannual review and consider the pupil for reclassification. Team members should be notified in advance and the necessary data will need to be collected. However, the team should not automatically review the pupil's progress in both programs unless it appears the pupil is ready for both reviews concurrently.

Special Considerations

Every year, pupil counts are taken for both programs. In special education, pupil count reports occur in December and April of each year. In bilingual education, the annual census is done by the first day of March. At the district level, data forms can be coordinated so that information is consistent. Special education personnel should follow the procedures specified in E.C. 52164 for determining primary language. Also, bilingual personnel should be careful to report special education students as defined in CAC, Title 5, Sec. 3030(J). The pupil's language status should also be specified in the IEP. Once specified, special education data collection instruments can refer to the IEP for language status. By coordinating this information, special education staff need not conduct independent or separate assessments of oral language proficiency for LEP pupils. This can save thousands of hours of staff time and eventually result in financial savings.

Bilingual and special education programs permit funds for staff development. Since LEP pupils qualify for both programs, staff development should include the unique needs of the LEP pupil with exceptional needs. The unique needs of dual-eligible populations can also lead to better use of existing resources. Funds can be combined and used for release time and other training costs. Districts can contact local county offices for bilingual resources. Special Education Local Planning Agencies (SELPAs) may also be contacted for special education resources.

Summary

This handbook maintains that legal streamlining of existing state mandated requirements for bilingual and special education is possible. The purpose of the merger is quite simple: administrators need to free up staff resources normally spent on administrative requirements so more time can be spent on instruction.

Secondly, this handbook discusses some of the difficulties encountered when providing educational services to pupils with limited English proficiency who demonstrate academic deficiencies. Types of bilingualism and their effect on school achievement are presented. The use of the Student Study Team is suggested as an effective process to distinguish between a true learning disability and an academic learning problem.

Next, a detailed comparison of bilingual and special education law is presented. Specific requirements are paralleled to assist the administrator in efficiently implementing the legislation as it effects students who have limited English proficiency and qualify for special education services.

Lastly, this handbook presents administrative steps that, if followed, combine two separate laws into one single procedure. The figures and flow-charts are intended to be used by teachers who implement legal mandates. Ultimately, the services delivered to LEP special education students will improve as schools meet legal compliance.

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Making a Compliance Visit

Complying with rules, regulations, and laws is a function of the Department of Education. Reviewers help determine if current practices meet legal standards and also help improve programs by giving technical assistance. This guide has been developed to make the reviewer's job easier when determining compliance, and to give resources for helping those districts who need improvement. Specific items have been identified in the Special Education Compliance Section which apply to limited English proficient students (LEP). This handout was developed because so many districts have difficulty applying state mandates to LEP students.

Application of state law and regulations to LEP students does require an understanding of how these students differ from English speaking students. From a legal standpoint, LEP students should have equal access to any program. Linguistic differences should not isolate students from what is offered to all students. School administrators and teachers need to ensure that program services are available to all students when they speak a language other than English. California's state bilingual law also requires that students learn English as a second language and receive assistance in their native lanuage in order to keep up with their peers as they learn English. LEP students are entitled to receive special education concurrent with participation in bilingual programs.

As the reviewer begins the important task of applying special education law to limited English proficient students, it is crucial to remember that the critical difference between LEP students and other students is *linguistic* in nature. School programs must accommodate for these differences as they provide educational services.

Compliance Items

The next section describes in detail how to ascertain compliance for the following items contained in the Coordinated Compliance Review Document, the Coordinated Compliance Review Document, the end-product of the compliance monitoring of specially-funded educational programs conducted triannually by a multi-disciplinary team from the California State Department of Education. Programs monitored are school-based coordinated programs, pupil motivation and maintenance programs, child development, consolidated programs, migrant education, special education, vocational education, and adult education.

Item	Areas
2b, 6f	**Notification in primary language**
3b	**Assessment plan**
3c	**Staff qualifications**
4d	**IEP contents for LEP student**
5f	**Proper placement in special education**
5g	**Racial/Ethnic balance**

Item 2b: *"Parent is informed that his/her child has been referred to be assessed for special education services."*

What to look for

If the student is LEP, the district should send notices in the parent's primary language. Check the completed "Home Language Survey" to determine the language the parent speaks. Sometimes, the student may speak one language and the parent may speak another. In most cases, the language spoken by the student is the language used in the home. If the language of the notice does not reflect the language of the home, ask for an explanation. Parents may be informed via phone or in person, but this should be documented. Key focus here is, does the parent know their child has been referred?

Item 6f: *"All notices, including IEPs are provided in the primary language of the parent when requested."*

What to look for

Most districts have translated forms which are used when parents speak a language other than English. However, do not assume that just because the forms are available that they are used. One way to identify the process of referral to placement, is to determine if notification occurred in the primary language.

The notices should also be written in a language easily understood. If the reviewer is not bilingual, a bilingual paraprofessional may be asked for an opinion about the language used. The paraprofessional may be able to interpret the notices for the benefit of the non-bilingual reviewer.

Item 3b: *"An assessment plan is developed within 15 days and contains the following information: 4) Individual's primary language and language proficiency status, 5) recent assessments, including any available independent assessments."*

What to look for

The student's primary language should be included in the assessment plan. This is determined through parental response on the "Home Language Survey" completed upon enrollment to school [E.C. 52164.1(a)]. If the home language survey indicates a language other than English, the student is tested, first in English, then in their primary language, to determine language status [E.C. 52164.1(b)(c)]. State bilingual law identifies students as either limited English proficient (LEP), fluent English proficient (FEP), or English only (EO). After assessment, a student who speaks a language other than English in the home is classified as LEP or FEP. This designation should be included in the assessment plan.

Recent assessments for LEP students can include testing information previously administered in the native language to satisfy state bilingual requirements [E.C. 52164(c)]. This can include measuring students oral fluency, speaking, comprehension, reading and writing abilities in both English and the native language. If this information is appropriate to the area of suspected disability, it can be referred to in the assessment plan.

Item 4d: *"..the written IEP contains all the required components...Linguistically appropriate goals, objectives, programs and services..". [E.C. 56345(a-b)(1-4)].*

What to look for

When a LEP student is also eligible for special education, linguistically appropriate goals developed must be included in the individualized education program (IEP). In simple terms, linguistically appropriate goals are those activities which insure that the student's inability to speak English does not preclude the prevision of meaningful instruction or services. There are several ways to check for this during a compliance visit.

First, determine who attended the IEP team meeting. When a LEP student is referred, the IEP team should consider how the student's home language affects academic, cognitive, social, and other areas of performance. A person knowlegeable about the student's performance in both English and the primary language should be present during the IEP team meeting. Having a person who has expertise about the student's performance is consistent with state law [E.C. 56341(c)(2)]. This person can also help the team decide how second language acquisition differs from a handicapping condition. The normal process of second language acquisition should not be diagnosed as a handicapping condition (CAC 3023.b). This is one method of implementing this requirement.

Secondly, check IEP form to determine if goals consider that the student is LEP. Linguistically appropriate goals can be met several ways depending on the instructional setting for special education and the type of bilingual program offered in the school. Schools must offer either a self-contained bilingual classroom or an individual learning plan to LEP students (E.C. 52165). When the student is eligible for both bilingual and special education, a range of options are available which can include:

- **Self Contained Bilingual Class and IEP (Resource Specialist)**
- **Coordinated Individual Learning Plan (ILP)/IEP services**
- **Merged IEP which contains ILP (full day special education)**

Factors determining the type of bilingual service include: 1) type of bilingual program offered on site and 2) the nature of the handicapping condition and its effect on placement in the least restrictive environment.

For example, the first option listed is the self-contained bilingual class and the Resource Specialist Program. In this situation the student has access to both bilingual and special education programs concurrently.

In the second case, the bilingual individual learning plan is coordinated with special education services. It is recommended that such coordination be spelled out in the IEP so that services are clearly documented. In the third case, the LEP student receives special education in a special class or center. Bilingual services have *merged* into this instuctional setting. This usually can be achieved with the help of a bilingual aide who provides some bilingual services within the special education class. The IEP for this student should state how linguistically appropriate instruction will occur in this setting.

Item 5f: *"Racial/ethnic and language minority students are properly placed in special education programs."*

Comment

This item applies not only to LEP students, but to Black students as well. This item is also difficult to verify because it involves reviewing numerous data sources to determine if minority students have been properly assessed and placed into special education. The reviewer would have skills, knowledge and experience in order to make this judgement. If a district is in compliance with this section, assessment practices will not change. If they are out of compliance, it is up to the reviewer to give specific remedies on how to correct deficient areas.

It is important for the reviewer to review data carefully because glossing over this item in effect gives a stamp of approval for poor practices. By carefully reviewing student records, the reviewer can give critical objective information to school staff who might otherwise be unaware of poor practices. Ultimately, the goal is to determine if in fact students are in the right program and if such decisions were based on educational needs and not racial or ethnic bias.

What to look for

For LEP students, the reviewer must look at both who administered tests to determine eligibility and what tests were used. Both of these issues form the basis for the *Diana v. State Board of Education* (1970) suit where Judge Pecham ordered the State Department of Education to monitor districts to ensure that students were properly placed. Some of the most common practices used to meet this provision are:

- **Using bilingual staff who administer parallel psychometric instruments in both English and the primary language.**

- **Using bilingual interpreters who team with monolingual staff to administer non-psychometric measure to assess intellectual or cognitive abilities, (e.g. Piagetian assessment, alternative means assessment, or information processing test).**

- **Using bilingual interpreters who translate English versions of tests.**

The reviewer may find other combinations of testing practices and personnel, but these seem to be the most common. In the first example, the bilingual staff should have been assessed for competence in the native language and understanding of the cultural and ethnic background of the pupil [CAC 3023(d)]. In the second example, interpreters also need to be assessed for competency and, if alternative means of assessment [CAC 3030(c)(j)] were used, this should be specified in the assessment report along with who did what. The last example is the least recommended practice because test results become invalid and findings are virtually unreliable and indefensible. This practice, may be found out of compliance.

Item 5g: "A disproportionate representation does not exist for racial/ethnic and language minority students enrolled in special education."

What to look for

The reviewer should receive a list of districts that are out of balance according to data submitted to the State Department of Education. If a district has been identified as out of balance, the following should be determined:

- **If the racial imbalance occurred because of inappropriate assessment practices**

- **What factors contributed to racial imbalance, and**

- **If the written explanation submitted to the Department accurately reflects practice.**

To answer the first question, refer to **item 5f**. By this time the district's assessment practices should be familiar. Interviews with several people can give a sense of how assessments are conducted. The second question deals with demographic reasons of district imbalance. The district may be serving students outside the district, which raises enrollment, or they may be reporting TMR students under the MR category which is submitted to the Department. These justifications should have been submitted in writing to the Department prior to the compliance visit. The last item refers to data submitted to the Department. Review what was submitted to determine if this is actually occurring based on information obtained on site. If the district has a logical explanation for why they are out of balance, the district should not be found out of compliance. Note the explanation on the review document.

If a district has not been found out of balance, determine if assessment practices are in compliance and that minority students are not disproportionately overrepresented in special education. This can be accomplished by asking for class lists and comparing district racial/ethnic enrollment data. Rule of thumb is that proportionate representation means that the ethnic/minority population in special education does not exceed the ethnic-minority population in the district. If a discrepancy exists, request the same information mentioned previously.

PROGRAM ADVISORY
California State Department of Education
August 26, 1987

Sunset Program Provisions Effective June 30, 1987

Pursuant to Education Code Sections 62000 and 62000.2

The purpose of this Advisory is to provide districts with advice related to the five categorical programs affected by the June 30, 1987 "sunset" provision of Education code Section 62000.2.[1] The programs are:

1) Miller-Unruh Basic Reading Act of 1965,

2) School Improvement Program,

3) Indian Early Childhood Education,

4) Economic Impact Aid, and

5) Bilingual Education.[2]

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[1]Unless otherwise specified, all statutory references are to the Education Code.

A.B. 37 would have extended these five programs to June 30, 1992. The Governor vetoed A.B. 37 on July 24, 1987. The level of funding for each of the five programs under the 1987-1988 fiscal years budget was not affected by this veto.

[2]Education Code sections regarding the A.B. 777 School-Based Program Coordination Act (Sections 52800-52904) and the S.B. 65 School-Based Pupil Motivation and Maintenance Program and Dropout Recovery Act (Sections 54720-54734) have not expired. the Department is planning to issue an Advisory on these two programs as soon as possible in light of Sections 62000-62007.

General Considerations for Sunset Programs

There are eight general consideration which the Department believes are important to the continuing operation of the five affected programs. Each is discussed briefly below.

1. Flow of Funds to Each Program Does Not Change

The funds for the five affected programs will:

> be disbursed according to the identification criteria and allocation formulas for the program in effect on the date the program shall cease to be operative pursuant to Sections 62000.1 to 62000.5, inclusive, both with regard to state-to-district and district-to-school disbursements. (Section 62002; emphasis supplied.)

In sum, the identification criteria and allocation funding formulas for the five programs have not been affected by Sections 62000-62007. All previous fiscal statutes and regulations continue to apply.

2. Funds Must Be Used For the "General Purposes" of Programs

Sections 62002 requires that funds must be used "for the general purposes" or "intended purposes" of the program but eliminates "all relevant statutes and regulations adopted . . . regarding the use of the funds." Because no previous education program has been required to operate under these conditions, there is no precedent to guide understanding of this statute. Section 62002 eliminates the specific statutory authorization for many of the operational procedures of each of the five programs. Thus, local schools and districts clearly have more overall programmatic discretion now that the specific program laws and regulations have expired. That discretion is not unlimited, however. There is the statutory requirement that the funds be used for the "general" or "intended" purposes of the program, and there are also federal legal requirements with which state and local educational agencies must comply. For example, categorical funds may not be used for general fund purposes. Funds for each of these five programs must be used to provide supplementary assistance, such as resource teachers, aides, and training materials, but may not be used for general fund purposes such as teacher salary increases.

3. Parent Advisory Committees and School Site Councils Continue

Section 62002.5 provides:

> Parent advisory committees and school site councils which are in existence pursuant to statutes or regulations as of January 1, 1979, shall continue subsequent to the termination of funding for the programs sunsetted by this chapter. Any school receiving funds from Economic Impact Aid or Bilingual Education Aid subsequent to the sunsetting of these programs as provided in this chapter, shall establish a school site council in conformance with the requirements in Section 52012. The functions and responsibilities of such advisory committees and school site councils shall continue as prescribed by the appropriate law or regulation in effect as of January 1, 1979. (Section 62002.5; emphasis supplied.)

4. Audits and Compliance Reviews Are Required

The Department must "apportion the funds specified in Section 62002 to school districts" and "audit the use of such funds to ensure that such funds are expended for eligible pupils according to the purposes for which the legislation was originally established for such programs" (Section 62003). "If the Superintendent of Public Instruction determines that a school district did not comply with the provisions of [Sections 62000-62007], any apportionment subsequently made pursuant to Section 62003 shall be reduced by two times the amount the superintendent determines was not used in compliance with the provisions of (sections 62000-62007)." (Section 62005) "[I]f the Superintendent of Public Instruction determines that a school district or county superintendent of schools fails to comply with the purposes of the funds apportioned pursuant to Section 62003, the Superintendent of Public Instruction may terminate the funding to that district or county superintendent beginning with the next succeeding fiscal year." (Section 62005.5) The Department also continues to have legal obligations to supervise and enforce local school districts' compliance with the Equal Education Opportunities Act. (See 20 U.S.C. Sections 1703, 1720.)

Coordinated compliance reviews scheduled for 1987-88 are currently planned to be held; however, due to budget cuts it is likely that the validation review process will be modified. In addition, the Department plans to revise the Consolidated Programs Section of the Coordinated Compliance Review Manual related to compliance monitoring functions as mandated by Sections 62003, 62005.5 and 64001. Information regarding these changes will be communicated as soon as possible.

The Department currently is reviewing the status of findings of districts which were not in compliance with applicable statutes and regulations prior to June 30, 1987. Determinations will be made whether those findings will continue in view of Sections 62000-62007. Findings based upon the following criteria will be maintained: (1) the general purposes of the program, (2) the distribution of funds, or (3) Section 62002.5 relating to parent advisory committees and school site councils. Findings based upon specific statutes and regulations other than the three criteria listed in the previous sentence will be dropped.

5. Program Quality Reviews and School Plans Continue

Education Code Section 64001 establishes the requirement for program quality reviews and continues the requirement for school plans for schools receiving Consolidated Programs funds. Since this section of the Education Code is not affected by Sections 62000-62007, districts and schools must continue to schedule and conduct program quality reviews and develop and implement school plans as in the past. The Department of Education procedures and documents used to comply with Section 64001 will continue to be operative.

6. Use of Staff Development Days and the School-Based Coordinated Program Option

The authorization for schools with School Improvement (SI) Programs to use up to eight school days each year for staff development and/or to advise students, yet receive full average daily attendance (ADA) reimbursement, is contained in former Section 52022. Since this section of the Education Code has expired, these days are no longer available to SI schools.

A major consequence of the expiration of the five categorical programs is to provide schools and districts with greater flexibility in operating the programs. Consistent with this purpose is the School-Based Program Coordination Act (Sections 52800-52888) which is available to coordinate the funding of any or all of the following six programs: 1) School Improvement Program, 2) Economic Impact Aid, 3) Miller-Unruh, 4) Gifted and Talented Education, 5) Staff Development, and 6) Special Education. One of the benefits of a school opting to participate in this program is that Section 52854 allows the school to use a maximum of eight school days per year for staff development and/or advising students and still receive full ADA reimbursement. The three basic steps a school must follow to participate in the School-Based Coordination Program are set forth below.

7. Waivers of the Education Code

The State Board of Education has authority to consider waivers of the Education Code under two conditions: 1) under the general authority provided in Section 33050, and 2) under specific waiver provisions which are contained within some programs. Although the specific waiver provisions in the sunset programs have expired, the general waiver authority is still available to waive nonrestricted sections of the Education Code, including Sections 62000-62007.

8. Future Legislation May Affect Programs Which Have Sunset

In deciding the extent to which changes in the five programs which have sunset will be made, districts should remember that there may be efforts made in the Legislature to reinstate the same or similar statutory requirements for each of the programs. Whether those efforts will prove successful is very uncertain at this point.

Specific Questions and Answers Concerning the Five Programs

General Introduction

The expiration of the five categorical aid programs on June 30, 1987, leaves many issues unresolved. In this portion of the Advisory, we attempt to answer some of the most frequently asked questions about the impact of Sections 62000-62007 on the use of funds for those programs. We shall provide more information as we resolve ambiguities in the interpretation of these sections.

With regard to each of the programs, the specific statutory and regulatory requirements have been discontinued. Some type of objective evidence of the appropriate use of funds for the "general purposes" of the particular program would, however, appear to be necessary.

I. Miller-Unruh Basic Reading Act of 1965:

Question 1: *What is the general purpose of the program?*

Answer: Former Section 54101 emphasized that Miller-Unruh funds are provided to employ and pay the salary of reading specialists for the purpose of preventing and correcting "reading difficulties at the earliest possible time in the educational career of the pupil." The Legislature intended "that the reading program in the public schools be of high quality." (Former Section 54101.) In order to achieve its intent, the Legislature enacted the Miller-Unruh reading program "to provide means to employ specialists trained in the teaching of reading." (Former Section 54101.)

Question 2: *What is required now that the legislation has expired?*

Answer: School districts participating in the program must employ reading specialists for programs designed to prevent and correct reading difficulties as early as possible. It is the opinion of the Department, with the concurrence of the Commission on Teacher Credentialing, that former Section 54101's purpose (i.e., that any district using Miller-Unruh funds "employ specialists trained in the teaching of reading") and intent (i.e., "to provide salary payments for reading specialists") currently require that a Miller-Unruh funded teacher hold a reading specialist credential issued pursuant to Section 44265 (i.e., a Ryan Act Specialist Credential). This opinion is based upon Sections 44001, 44831, 44253.5, 54101, and 62002. The statutes which established the Miller-Unruh Reading Specialist

Certificate (former Sections 54120 and 54121) have expired. The Commission on Teacher Credentialing plans to issue "coded correspondence" related to the credential requirement for "reading specialists" as now mandated by Section 62002 and former Section 54101. the Department has recommended to the Commission that it adopt regulations for the acceptance of the former Miller-Unruh Reading Specialist Certificate as fulfilling the minimum requirements for a reading specialist credential under Section 62002 and former Section 54101.

In addition, districts receiving Miller-Unruh funds are required to "cofund," with general funds, each reading position for which partial Miller-Unruh monies are received. For example, partial Miller-Unruh funding of ten reading positions must be used to employ ten reading teachers. Districts cannot aggregate Miller-Unruh positions because the cofunding requirement is a part of the allocation funding process preserved by Section 62002. (Section 62002; former Section 54141, 54145.)

Question 3: *What is not required now that the legislation has expired?*

Answer: Four major program components are no longer statutorily required:

a) Participating districts are not required to address the specific priorities in former Section 54123 (e.g., first priority is supplementing instruction in kindergarten and grade 1). However, districts are required to describe how Miller-Unruh Program funds are being used to address the "earliest" prevention and correction of reading difficulties. (Former Section 54101.)

b) Districts are not required to monitor the caseload of the reading specialist. (Former Section 54123.)

c) Districts are not required to allot time to the specialist for diagnostic and prescriptive planning, staff development, and self-improvement. (Former Section 54123.)

d) Districts are not required to pay reading specialists a $250 stipend. (Former Section 54124.)

II. School Improvement (SI) Program:

Question 1: *What are the general purposes of the program?*

Answer: As former Section 52000 stated, the SI program is intended "to support the efforts of each participating school to improve instruction, auxiliary services, school environment, and school organization to meet the needs of pupils at that school." These efforts are thus directed to the goal of improving the

students. The standards of quality contained in the Program Quality Review Criteria are the guides for the school's improvement efforts. They encompass curricular areas (i.e., English Language Arts, Mathematics, Science, History/Social Science, etc.) and non-curricular areas (i.e., learning instructional practices, special needs, etc.). The school site council is required to develop an SI plan and a budget; the plan guides the implementation and evaluation of the school's improvement activities.

Question 2: *What is not required now that the original legislation has expired?*

Answer: The following four major components of the School Improvement Program are no longer in effect:

a) The requirement for a district master plan to guide the implementation of School Improvement. (Former Sections 52034 (b) through (i); former Sections 52011(a) and (b).)

b) The specific requirements of what a school plan must include. (Former Sections 52015, 52015.5, 52016, 52019.) There continues, however, to be a requirement for a school plan which is designed to meet the students' educational, personal and career needs through the implementation of a high quality instructional program. Improvement efforts in the plan include, but are not limited to, instruction, auxiliary services, school organization and environment. (Former Section 52000.)

c) The authorization to use up to eight school days each year for staff development and/or to advise students and still receive ADA reimbursement. (Former Section 52022.)

d) The authorization to waive various sections of the Education Code that refer to School Improvement. (Former Section 52033.) Districts which desire to waive sections of the Education Code that remain in effect and involve School Improvement now must use the general waiver program and form.

Question 3: *Are school site councils still required?*

Answer: Yes, under Section 62002.5 (quoted on page 3 above) and Section 64001.

Question 4: Are the requirements for composition, functions, and responsibilities of the school site councils contained in former Section 52012 still in force?

Answer: Yes. Section 62002.5 requires that all parent advisory committees

and school site councils which were in existence prior to June 30, 1987, continue. That is, Section 62002.5 requires that all current and future operating school site councils continue to operate with the same composition, functions, and responsibilities required prior to June 30, 1987.

Question 5: *Are eight days of staff development available under Section 52022?*

Answer: Because former Section 52022 was terminated by the sunset provisions, the specific authorization for SI schools to receive full average daily attendance reimbursement for a maximum of eight staff development days no longer exists. However, schools may exercise the option of placing the SI program under the authority of the School-Based Program Coordination Act (Sections 52800-52903). This portion of the Education Code was not affected by the sunset legislation and grants schools the authority to use up to eight school days a year for staff development and still receive ADA reimbursement for each day. (See Section 52854.)

Question 6: *How can schools become School-Based Coordinated Program Schools?*

Answer: Districts and schools which choose to exercise this option must complete the following steps:

a) The local governing board must decide to grant permission to schools to participate and must adopt policies and procedures to guide both the distribution of information about and the formation of school site councils. The school site council must agree (vote) to come under the provisions of the School-Based Program Coordination Act and identify a funding source or sources to be a part of this option. The local governing board must then grant approval before any school may operate a School-Based Coordinated Program.

b) The school site council must develop or revise an existing school plan accordingly. The local governing board must then approve the new or revised plan.

c) The district must then notify the Consolidated Programs Management Unit in the State Department of Education of this change in status by submitting Addendum C contained in the Manual of Instruction for the Consolidated Program (Form SDE 100).

NOTE: There is no authority in the School-Based Coordinated Program provisions, as there was in the former School Improvement legislation, to use the eight staff development days to develop the school plan. The School-Based Program provisions authorize staff development days only for the implementation

of a developed and approved plan. Within this context, all staff development and/or the advising of students must directly relate to the purposes of the program and must be specified in the school plan.

Question 7: *Must a district continue to meet the minimum funding requirements for schools participating in the School Improvement Program?*

Answer: Yes. Section 62002 states that the allocation formulas in effect on the date that a program ceases to be operative shall continue to apply to the disbursement of funds. Since the minimum funding levels are a part of the allocation formulas, districts must continue to meet the established funding levels for schools.

III. Indian Early Childhood Education:

Question 1: *What is the general purpose of the program?*

Answer: As stated in former Section 52060, the purpose of this program is to "improve the educational accomplishments of American Indian students in rural school districts in California." The intent is "to establish projects which are designed to develop and test educational models which increase competence in reading and mathematics." The American Indian parent community must be involved in planning, implementing and evaluating the educational program. (Former Section 52060.)

IV. Economic Impact Aid/State Compensatory Education:

Question 1: *What is the general purpose of Economic Impact Aid, the State Compensatory Education (EIA/SCE) Program?*

Answer: The general purposes of EIA/SCE are found in former Sections 54000, 54001, and 54004.3[3]

Former Section 54000 stated:

It is the intent of the Legislature to provide quality educational opportunities for all children in the public schools. The Legislature recognizes that a wide variety of factors such as low family income, pupil transiency rates, and large

[3]The program "Economic Impact Aid" as specified in Section 62000.2(d) means the Educationally Disadvantaged Youth Programs governed by former sections 54000-54059.

numbers of homes where a primary language other than English is spoken have a direct impact on a child's success in school and personal development, and require that different levels of financial assistance be provided districts in order to assure a quality level of education for all pupils.

Former Section 54001 stated:

From the funds appropriated by the Legislature for the purposes of this chapter, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall administer this chapter and make apportionments to school districts to meet the total approved expense of the school districts incurred in establishing education programs for pupils who qualify economically and educationally in preschool, kindergarten, or any of grades 1 through 12, inclusive. Nothing in this chapter shall in any way preclude the use of federal funds for educationally disadvantaged youth. Districts which receive funds pursuant to this chapter shall not reduce existing district resources which have been utilized for programs to meet the needs of educationally disadvantaged students.

And former Section 54004.3 stated:

It is the intent of the Legislature to provide all districts receiving impact aid with sufficient flexibility to design and administer an inter-district allocation system for impact aid which reflects the distribution and the needs of the needy population and assure the provision of services to students traditionally served by the educationally disadvantaged youth programs and bilingual education programs.

Question 2: *What is not required now that the legislation has expired?*

Answer: Unlike the other four categorical funding programs which expired on June 30, 1987, the statutory EIA/SCE programs remains almost entirely intact. Nearly all of former Sections 54000-54059 are linked to the Economic Impact Aid funding formulas (the "EIA formula" and the "bounce file") contained in former Sections 54020-54028, which are preserved by Section 62002. In addition, the program options for EIA funds are permissive–other than the requirement inherent in former Section 54004.7 and Section 62002 that funds for LEP students must be expended first. Those permissive program options remain after the Economic Impact Aid Program terminated on June 30. Because EIA/SCE funds under Section 62002 must continue "to be disbursed according to the identification criteria and allocation formulas" in effect on June 30, most major components of the EIA/SCE program which were mandatory prior to June 30 are still mandatory.

Question 3: *What is the relationship after June 30 between EIA/SCE and federal ECIA, Chapter 1 funds?*

Answer: There are three major considerations in this area:

a) ECIA, Chapter 1, requires that programs in target schools be comparable to those in other schools. When EIA funds are used to meet the educational needs of educationally deprived students and are consistent with the purposes of Chapter 1, districts are allowed to exclude these funds when calculating comparability.

b) ECIA, Chapter 1, must supplement and not supplant state funded programs. When EIA/SCE programs are consistent with the purposes of Chapter 1, districts may exclude these funds from the requirement that Chapter 1 funds supplement, not supplant.

c) The allocation alternatives (Title 5, sections 4420 and 4421) developed as a result of ESEA, Title I, have been superseded by ECIA, Chapter 1. They are no longer mandated by any statute. However, they may serve as useful guidelines for district seeking models for the allocation of EIA/SCE funds.

Question 4: *What flexibility does a school receiving EIA funds have now that it did not have before June 30, 1987?*

Answer: All services which were allowable prior to June 30 are still permitted. For example, low achievement school-wide programs, school security costs, and University/College Opportunity (UCO) programs remain viable options for the expenditure of EIA/SCE funds. In addition, school districts have the flexibility to design other programs for the use of EIA/SCE funds for eligible pupils which are consistent with former Sections 54000, 54001, and 54004.3.

V. Bilingual Education:

Question 1: *What are the general or intended purposes of the bilingual education program?*

Answer: Former Section 52161 specified eight general purposes of bilingual education programs. Section 62002 now makes each of these purposes a requirement for serving limited-English-proficient (LEP) students. They are:

1) "[T]he primary goal of all [bilingual] programs is, as effectively and efficiently as possible, to develop in each child fluency in English."

2) The program must "provide equal opportunity for academic achievement, including, when necessary, academic instruction through the primary language."

3) The program must "provide positive reinforcement of the self-image of participating pupils."

4) The program must "promote crosscultural understanding."

5) California school districts are required "to offer bilingual learning opportunities to each pupil of limited English proficiency enrolled in the public schools."

6) California school districts are required "to provide adequate supplemental financial support" in order to offer such bilingual learning opportunities.

7) "Insofar as the individual pupil is concerned participation in bilingual programs is voluntary on the part of the parent or guardian."

8) School districts must "provide for in-service programs to qualify existing and future personnel in the bilingual and crosscultural skills necessary to serve the pupils of limited English proficiency of this state."

Question 2: *What responsibilities do districts have to meet federal legal requirements to provide appropriate services to LEP students?*

Answer: The United States Supreme Court held in 1974 that LEP children were deprived of equal educational opportunities when instruction in a language they could understand had not been provided. (Lau v. Nichols (1974) 414 U.S. 563.) The Lau ruling has been codified in Section 1703(f) of the Equal Education Opportunities Act. That statute provides:

> No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by–
> (f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs. (20 U.S.C. Section 1703(f); emphasis supplied.)

The federal cases which have interpreted 20 U.S.C. section 1703(f) establish a three-part analysis of whether "appropriate action" is being taken to eliminate language barriers impeding the participation of LEP students in a district's regular instructional program. It is that:

1) The educational theory or principles upon which the instruction is based must be sound.

2) The school system must provide the procedures, resources, and personnel necessary to apply the theory in the classroom. That is, the programs

actually used by the school system must be reasonably calculated to implement effectively the educational theory adopted.

3) After a reasonable period of time, the application of the theory must actually overcome the English language barriers confronting the students and must not leave them with a substantive academic deficit.

(See generally Gomez v. Illinois State Bd. of Education (7th Cir. 1987) 811 F.2d 1030, 1041-1042: Castaneda v. Pickard (5th Cir. 1981) 648 F. 2d 989, 1009-1010; Keyes v. School District No. 1 (D. Colo. 1983) 576 F. Supp. 1503, 1516-1522.)

The above requirements apply to all school districts which enroll one or more LEP pupils. In addition, districts receiving ESEA Title VII funding must adhere to ESEA Title VII regulations. Districts operating Lau plans approved by the federal Office of Civil Rights should continue to comply with their plan; Any changes should be submitted to OCR for review under Title VI prior to implementation.

Question 3: *What are the minimum services which must be provided to LEP students after June 30, 1987?*

Answer: Based upon (a) federal statutes and regulations; (b) applicable federal court decisions; (c) EIA/LEP identification criteria and allocation funding formulas; (d) former Section 52161; and (e) Sections 62000-62007, the following ten items appear to be the minimum services which the law requires districts to provide to LEP students:

- Identification of LEP students according to statutes and regulations in effect prior to June 30, 1987. (Section 62002; former Sections 52164; 52164.1; 52164.2; 52164.3; 52164.4; 52164.5; and 20 U.S.C. Section 1703(f).)[4]

- Assessment of the English and primary language proficiency of all language minority students. (Section 62002; former Section 52161; and 20 U.S.C. Section 1703(f).)

- Academic assessment of LEP students in order to determine when "academic instruction through the primary language" is necessary. (Section 62002; former Section 52161; and 20 U.S.C. Section 1703(f).)

- Offering an instructional strategy which must include: 1) an English language development program "to develop in each child fluency in English" as "effectively and efficiently as possible" and 2) the provision of

[4]Section 62002's reference to "identification criteria" preserves those criteria by which funds are allocated. Thus, the identification of LEP pupils continues to be governed by the current combination of statutes and regulations. They remain in effect until altered either by the Legislature or by the State Board of Education.

"equal opportunity for academic achievement, including, when necessary, academic instruction through the primary language." (Section 62002; former Section 52161; 20 U.S.C Section 1703(f); Castaneda v. Pickard (5th Cir. 1981) 648 F.2d 989, 1011; and Keyes v. School Dist. No. 1 (D. Colo. 1983) 576 F. Supp. 1503, 1518.)

- Provision of a procedure which ensures that the "participation of each student in bilingual programs is voluntary on the part of the parent of guardian." (Former Section 52161: Section 62002.)

- Provision of adequate practices, procedures, resources, qualified personnel, and staff development necessary to implement the general purposes of former Section 52161. (Section 62002; former Section 52161; 20 U.S.C. Section 1703(f); Castaneda v. Pickard (5th Cir. 1981) 648 F.2d 989, 1010, 1012-1013; and Keyes v. School Dist. No. 1 (D. Colo. 1983) 576 F.Supp. 1503, 1516-1518.)

- "[I]n-service programs to qualify existing and future personnel in the bilingual and crosscultural skills necessary to serve the pupils of limited English proficiency of this state." (Section 62002; former Section 52161; 20 U.S.C. Section 1703(f); and Castaneda v. Pickard (5th Cir. 1981) 648 F.2d 989, 1012-1013.)

- Monitoring of the progress of each student toward developing both "fluency in English" and "academic achievement" by means of adequate testing and evaluation. (Section 62002; former Section 52161; 20 U.S.C. Section 1703(f); and Castaneda v. Pickard (5th Cir. 1981) 698 F.2d 989, 1014.)

- Long term accountability for results: The district's instructional program should, over time, enable the LEP students to learn English and achieve in the regular instructional program. (Sections 62002, 62005, 62005.5; former Section 52161; 20 U.S.C. Section 1703(f); and Castaneda v. Pickard (5th Cir. 1981) 648 F.2d 989, 1010; and Keyes v. School Dist. No. 1 (D. Colo. 1983) 576 F.Supp. 1503, 1518-1519.) The District must specify the measures by which it is assessing the adequacy of its programs in serving the needs of its LEP students. (Sections 52161; and 20 U.S.C. Section 1702(f).)

- An established parent advisory committee (district and school level) functioning in the same manner as required prior to June 30, 1987. (Section 62002.5.)

Question 4: *What is not required now that the specific statutes and regulations have expired?*

Answer: Seven major statutory requirements are no longer required.

a) The definitions and specific requirements of program options (a)-(f). (Former Section 52163.)

b) The specific reclassification criteria. (Former Section 52164.6.)

c) The "triggering" mechanism for a bilingual teacher when ten LEP students with the same primary language are enrolled in the same grade level in K-6. (Former Section 52165.)

d) Bilingual classroom and Individual Learning Program (ILP) staffing requirements. (Former Section 52165.)

e) Classroom proportions of LEP student to non-LEP students. (Former Section 52167.)

f) The specific bilingual program-related credential or certificate and waiver requirements for staff assigned to previously required bilingual programs. (Former Sections 52163, 52165, 52166, 52172, 52178, 52178.1, 52178.3, 52178.4.)[5]

Even though these specific requirements are no longer mandated, the eight general purposes of former Section 52161 must be integrated into whatever instructional program is implemented to serve LEP pupils.

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[5]When the district provides English language development and "academic instruction through the primary language," in order to implement the instructional strategy selected, the staff providing the instruction clearly must have the requisite language and academic skills to provide such instruction competently. The Department does not believe that this requires that every staff person have a specific bilingual credential or authorization. This opinion is based upon Sections 62000 and 62000.2 and their impact upon former Sections 52163, 52165, 52166, 52172, and 52178.

Whenever personnel holding bilingual certificates or authorizations are available, the Department strongly urges districts to assign them to classes in which "academic instruction through the primary language" is necessary. Similarly, bilingually-authorized teachers and language development specialists should be assigned to classes in which special English language development instruction is provided. (See Castaneda v. Pickard (5th Cir. 1981) 648 F.2d 989, 1012-1013.)

Since the general and bilingual statutory provisions involving credentialing have not expired (e.g., Sections 44001, 44831, and 44253.5), the Commission on Teacher Credentialing has informed the Department that it believes the current requirements for bilingual credentialing may still be in effect in certain situations. The Commission has stated that it plans to issue "coded correspondence" related to bilingual certificates and authorizations soon.

Question 5: *What effect do Sections 62000-62007 have on EIA/LEP funding?*

Answer: None. State funding of EIA programs, including programs for LEP students, continues. In addition, the "standard services remains in effect. EIA funds will continue to be disbursed according to the identification criteria and allocation formulas for the program in effect on June 30, 1987. However, the obligation to provide services to LEP pupils is not contingent upon receipt of state categorical funds, since each LEP student generates a given level of average daily attendance (ADA) dollars for instruction in the core curriculum and auxiliary services.

Question 6: *It is still necessary to fill out the R-30 annual language census?*

Answer: Yes. Under Section 62002, the funding formula for EIA funds has not changed. That formula is based upon multiple criteria, including the identification criteria contained in the R-30 census data. Therefore, in order to receive EIA funds to fulfill the general purposes of former Section 52161, schools and districts must continue to fill out the R-30 census forms in accord with identification requirements in effect before June 30, 1987.

Question 7: *What general advice does the Department have regarding changes in current bilingual programs?*

Answer: The Department believes that districts should assess their current practices and consider modifying existing programs in ways which will result in improving LEP students' academic achievement in the regular instructional program. Districts should be guided in improving programs by reviewing the descriptions of minimum state and federal legal requirements provided in this Advisory. Consistent with the trend throughout education, recent legislation would have provided local districts with more options for policies and programs than those allowed by the previous statute. The Department supports this trend toward more program flexibility and effectiveness as described in the recent legislation. In the absence of specific programmatic requirements, districts may now consider changes in the following areas:

a) Instructional Methods. Districts are encouraged to consider a variety of approaches for serving LEP students, but any approach must be based upon sound educational theory and principles.

b) Staffing. Districts may change staffing patterns in an effort to deliver services in a more effective manner. Policies should be directed toward ensuring LEP students access to adequate and appropriately qualified staff who are provided with sufficient resources to accomplish their assignments.

c) Classroom Composition. Alternatives to the strict classroom composition ratios of LEP and non-LEP students are now available. Districts are cautioned, however, to avoid approaches which promote prohibited segregation of LEP students.[6]

d) Parent Involvement. Districts may consider a variety of strategies for involving parents in the education of their children. In particular, each parent of an LEP student should 1) know what the alternative program choices are which the district is offering, 2) understand the nature of the alternatives, and 3) actively participate in an informal way in the selection of the program into which the child is placed. Schools are encouraged, whenever possible, to obtain the written consent of each student's parents when placing the student in a bilingual education program. Students identified as LEP should receive appropriate services pending parental response.

It must be remembered that each of the eight general purposes of former Section 52161 must be integrated into the entire bilingual education program.

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[6]It should be noted that there are existing federal prohibitions against segregating children within the school site. In Chapter 453, Statutes of 1986, the California Legislature addressed this issue last year and provided:

> The classroom proportion specified in subdivision (a) may be modified for the purpose of providing effective instruction for all pupils in core academic subjects. Pupils of limited English proficiency participating in programs established pursuant to subdivision (a), (b), or (c) of Section 52165 shall receive instruction for at least 20 percent of the school day in classes in which the proportions specified in subdivision (a) are met, and shall receive instruction in classes with pupils of fluent English proficiency for an increased portion of the school day, as their English language skills increase. (Former Section 52167(b).)

Although this section has expired, the Department believes that it provides a reasonable alternative for additional flexibility in classroom composition. Chapter 453 was signed by the Governor and passed by a bi-partisan vote of the Legislature.

Conclusion

The Department is working to define more clearly the effects of Sections 62000-62007 on program operation and will provide additional information as it becomes available. Districts needing assistance interpreting this advisory may contact any of the following Department staff:

1) Miller-Unruh Basic Reading–Janet Cole/Donovan Merck: 916/322-5960 or 322-4981

2) School Improvement–Dennis Parker/Jim McIlwrath: 916/322-5954

3) Indian Early Childhood Education–Andy Andreoli/Peter Dibble: 916/322-9745

4) Economic Impact Aid/State Compensatory Education–Hanna Walker: 916/445-2590

5) Bilingual Education–Leo Lopez: 916/445-2872

6) Legal Issues–Allan Keown: 916/445-4694

7) Waivers–Vicki Lee/Leroy Hamm: 916/322-3428 or 323-0975

8) School-Based Pupil Motivation and Maintenance Programs (SB 65)–Maria Chairez: 916/323-2212

9) Consolidated Programs–Bill Waroff: 916/322-5205

10) School-Based Coordinated Programs–please contact the person(s) listed above regarding the applicable funding source(s)

Teacher credentialing questions should be directed to:

1) Reading–Sanford L. Huddy, Commission on Teacher Credentialing: 916/445-0233;

2) Bilingual–Sarah Gomez, Commission on Teacher Credentialing: 916/445-0176.

Questions which fall outside the scope of this Advisory should be addressed in writing to:

Bill Honig
Superintendent of Public Instruction
Attention: Sunset Advisory Group
721 Capitol Mall
P.O. Box 944272
Sacramento, CA 94244-2720

RiSE
Resources in Special Education
650 University Ave., Room 201
Sacramento, CA 95825
916/921-0521

Publications Available

Prices Effective March 1, 1988

New! Assessment of Chinese Speaking Limited English Proficient Students With Special Needs, by Marion Tinloy, Amy Tan, and Brian Leung, 1987, 330 pp.	$ 25.00
New! Bilingual and Special Education: Procedural Manual for Program Administrators, 1987, 74 pp.	$ 10.00
Cooperative Activities for the Home: Parents Working with Teachers to Support Cooperative Learning by Audray Holm, Denise Schultz, Patricia Winget, and Linda Wurzback, 1987, 60 pp.	$ 5.00
Educators and Parents Working together to Develop Special Education Parent Support Groups, by Mary Ann Duganne, Marilyn Ferrara, and Tom Justice, 1986, 43 pp.	$ 8.50
Inservice on Inservice, by SERN 7, 1979, 80 pp.	$15.00
Integrating the Core Curriculum Through Cooperative Learning: Lesson Plans for Teachers, edited by Patricia Winget, 1987, 212 pp.	$22.50
Microcomputers: Critical Consumers and Users Guide, by Mary Britt Vasques and Steve Johnson, 1986, 158 pp.	$15.00
Self-Esteem: A Resource Notebook, by Dianna Zapata and Joanne Cohn, 1986, 130 pp.	$10.00
New! Software Programs and the Learning Disabled Student: The Second Report, by Anne Graves Bruce Ostertag, 1988, 17 pp.	$ 4.00
Special Education Parent Resources Guide, by Lynn Carlisle and Beverly Doyle, 1987, 195 pp.	$15.00
Revised Student Study Teams: A Resource Manual for Trainers and Implementors by Marcie Radius and Pat Lesniak, 1987, 297 pp.	shrink-wrapped: $20.00 with binder: $22.50
Student Study Team Banners, English or Spanish.	$12.00
Tutoring Your Child, by Joanne Cohn, n.d., 22 pp.	$ 5.50
Working With Adults With Exceptional Needs, by Lynn Carlisle and Trudy Connelly, 1985, 43 pp.	$ 5.50

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Analysis of Role-Shifting Patterns in Transition, by Joseph J. Pasanella and Thomas I. Justice, softcover, 47 pp.

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Building Bridges: Strategies for Parent-Professional Collaboration Training for Transition, by Marlene A. Dick, Lois Moulin, Susan Pellegrini, and Jeri Traub, softcover, 50 pp. **$10.00**

Collaborative Transition Planning Systems in Los Angeles County, by Donna Palace and Bill Whitmore, softcover, 130 pp.

$20.00

A Needs Assessment for Adults with Learning Disabilities, by H. C. Clitheroe, Jr., Robert Salinas, and Judi Hosking, softcover, 95 pp.

$15.00

Synthesis of Individual Transition Plans: Format and Process, by Kathleen LaMar and Bill Rosenberg, softcover, 128 pp.

$20.00

Programs and Services for Transition: A Synthesis of Options (Visual Depiction), by Linda Gamble, wallchart and accompanying brochure, 51 pp.

$5.00 (includes shipping)

Model Curriculum Emphasizing Transition: Planning Guide for Students with Mild Disabilities, by Lee Andersen, shrink-wrapped, 412 pp, 9 discs (Apple IIe and IBM).

$25.00

A Curriculum Guide for Transition: An Adaptation of the Individualized Critical Skills Model for Students with Mild Disabilities, by Kevin Bolinger, Virginia Michaels and Deen Reilly, softcover, 70 pp. **$10.00**

Orange County Transition Products, by Beverly Huff, Linda O'Neal, Barbara Vali, Marsha Burgess, and Michele Lovenduski:

Orange County Special Needs Services Directory, 220 pp.
Transition, softcover, 50 pp.
Transition Reference Guide, softcover, 9 pp.
Vocational/Employment Preparation, brochure

$20.00

A Collaborative Transition Planning System for Rural Communities: Butte County SELPA Case Study, by Frank Terstegge and Marla Pless, softcover, 200 pp. **$20.00**

Instructional Strategies for Special Education Students in Regular Vocational Classes: A Pre-Service Handbook, by Gary Greene, Charles Kokaska, Leonard Albright, and Corinne Beacham-Greene, softcover, 96 pp.

$17.50

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